

***Tasmania's Resource Management and Planning System:
Towards Sustainable Development?***

Phillip. M. Clark

BA (1986), Grad. Dip. Env. Stud. (Hons)(1991)

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School of Geography and Environmental Studies
University of Tasmania
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To John

Mandatory Declaration

This thesis contains no material which has been accepted for the award of any other degree or graduate diploma in any tertiary institution. To the best of the author's knowledge and belief, the thesis contains no material previously published or written by another person except when due reference is made in the text.

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December 1998

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Abstract

In 1994 the Tasmanian State Government finalised a suite of legislation, the Resource Management and Planning System (hereafter called the System), in response to pressures resulting from the State's past problems and conflicts associated with economic development and environmental management. In this dissertation examples of these problems and conflicts, their underlying circumstances, and the strengths and weaknesses of the environment protection and land-use planning legislation applicable at that time are examined. These pressures induced a reform process involving a change in political attitudes towards environmental management, and a complete review of the legislation, culminating in the formulation of the new System. The reform process, and the objectives, structure, instruments and processes of the System are explained.

The System is intended to incorporate into resource management and planning decisions the principles of sustainable development. Using the principles, objectives, and proposed measures for achieving sustainable development which emerged from the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, the author has deductively constructed a benchmark concept for sustainable development relevant to Tasmania. The System is assessed in terms of the degree to which it has incorporated of these principles and its potential to facilitate their objectives. In addition, the System is assessed for its potential means to avert or resolve a recurrence of Tasmania's past development and environmental management problems and conflicts.

Assessment shows that all the principles of sustainable development considered relevant to Tasmania are incorporated within the System either explicitly or, occasionally, by generous interpretation. Notwithstanding their incorporation, the principles are sometimes poorly defined, and can be expected to generally diminish the System's outcomes.

I argue that the potential for the System to facilitate the objectives of sustainable development is substantial, but is diminished by ambiguities in the System's own objectives, its limited jurisdiction, a lack of obligation on decision-makers to adhere to those objectives, and the absence or incompleteness of planning instruments and processes. The System could offer effective means for addressing Tasmania's development and environmental management problems and conflicts. The principal obstacles to this potential are its restricted jurisdiction, and the absence of a formal regional planning mechanism. The realisation of this potential greatly depends on the

quality of Ministerial, and therefore political, decision-making required by the System, the level of leadership given to promoting the System's objectives, and an adequate level of resourcing.

The assessment of the System undertaken here concludes with an overview of the lessons learned from Tasmania's experience in formulating and implementing a resource management and planning system intended to facilitate the objectives of sustainability. These lessons include the significant benefits resulting from a comprehensive consultation process with all stakeholders, the need for adequate education in relation to the System's objectives and processes for those using the System, and the shortcomings in the System's instruments and processes.

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Chapter One

Introduction

1.1 Synopsis

Tasmania possesses a colourful history of problems and conflicts which have emerged from the interface of development and environmental management. In this island state with substantial natural resources, these problems and conflicts, born of European settlement, have gradually escalated. In Tasmania, as in most regions, development has taken precedence over environmental management, resulting in circumstances of severe environmental deterioration, investment uncertainty, social conflict and political instability. Government could not continue to ignore the economic and environmental unsustainability of Tasmania's development pathway. In 1989 the State Labor Government initiated reforms to legislation governing development and land use planning, intending to give greater certainty of process to developers and an increased level of protection to the environment - arguably in that order of priority. The reform process commenced with a review of the former environment protection and planning legislation, and was concluded by a newly elected Liberal Government in 1994. The outcome of the process was a suite of new legislation comprising the Resource Management and Planning System, a system incorporating the principles of sustainable development. Reluctant acceptance has, however, pervaded the System's stuttering implementation, with many of the State's decision-makers needing to be dragged into its embrace. One may even speculate that, because the System has not provided the economic development which the sultans of politics and commerce anticipated, enthusiasm for it is waning.

This thesis is the story to-date of one small State's halting progress towards accepting sustainable development. It examines the central events and circumstances that punctuated Tasmania's movement towards the concept of sustainable development, and the resource management and planning system that resulted from the incorporation of the concept in legislation. The scope of this thesis is confined to the period since the introduction of the *Environment Protection Act* in 1973 - Tasmania's first formal environmental protection legislation. It is this legislation, combined with the *Local Government Act 1962*, that governed development in Tasmania up to the introduction of

the new System, and it was the review of this legislation from which the new System emerged.

The thesis consists of two Parts. The purpose of Part One is to investigate the issues related to the economic, environmental, political and social dimensions of the problems and conflicts associated with development and environmental management that occurred during the era of this legislation. The investigation includes the problems and conflicts associated with forestry and rural industries which, although not subject to these Acts, are important components of Tasmania's past and future environmental management profile. Part One also examines the antecedents to the reform of the previous environment protection and planning legislation, the principal circumstances and events that transpired during the reform process, and explains the System which emerged from that process. The purpose of Part Two is to assess the System against four selected criteria.

1.2 Questions and Postulations

A cursory glance at Tasmanian newspapers from the early 1970s to the late 1980s indicates that the problems with environmental management, investor confidence, social harmony and political instability were continuous. How prevalent were these problems, and what were their underlying causes? During this period the majority of development in Tasmania was governed by the *Environment Protection Act 1973* and *Local Government Act 1962*. One would presuppose that these Acts were unable to facilitate development in a manner that avoided environmental, economic, social and political problems. To what extent did these Acts contribute to the problems, and which characteristics of the Acts can be identified as at fault? Given that legislation is merely a tool for pursuing desired objectives, can the problems in any way be attributed to the Act's implementation and enforcement?

In 1989 the State Labor Government began a process to reform this legislation, a process that was concluded by the new State Liberal Government in 1994. Why, after approximately 16 years of escalating environmental degradation and continuing community disputes with consecutive State governments over environmental management, did the State Labor Government decide to reform the environment protection and land use planning legislation? And why did the Liberal Government agree to complete that reform? Political actions of such magnitude are rarely initiated without expected political gains. Is it overly cynical to assume that the State Labor and Liberal Governments expected substantial gains from introducing a suite of legislation

that enshrined the concept of sustainable development or, was the legislation, as I postulate, arrived at as much by accident as it was by intention?

The System which emerged from the reform process consisted of statutory objectives and provisions designed to promote the concept of sustainable development. How comprehensively did these objectives incorporate the principles of the international benchmark for sustainable development agreed to at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992? Moreover, what was the potential for the System to facilitate the objectives of those principles? It is not unreasonable to expect that a System designed to promote sustainability would also provide the means to address the environment and development problems which accompanied development in Tasmania during the 1970s and 1980s. Was this expectation warranted?

Such a seachange in approach to environmental management and land use planning could not have transpired without significant events and circumstances occurring prior to and during the development of that approach. What, for example, was the catalyst for initiating reform of the previous environmental protection and planning legislation? Moreover, considering the traditional reluctance by consecutive State Governments to limit the freedom of industrialists to pollute - because of the perceptions that environmental regulations impacted detrimentally on economic development and that industrialists preferred to avoid operational restrictions because of their concerns for economic competitiveness - what circumstances promoted sufficient confidence in consecutive State governments and industrialists to proceed with the reforms?

The System received wide acclaim for its potential to facilitate sustainable outcomes. On what was this acclaim based? More importantly, however, what circumstances and events were influential in creating the legislation on which the System's framework, objectives, instruments and processes relied. Although the System was widely accepted as being structurally sound, there were criticisms that some of its instruments and processes contained serious flaws and that its implementation was far from optimal. To what degree was this criticism justified and, what circumstances underlay the alleged less than optimal implementation of the System? Having examined the precursors to reform, the reform process and development of the System, including its implementation, what are the lessons that can be learned from the experience by Tasmanians in attempting to implement sustainable development legislation? All these questions will be answered.

1.3 Research Aims and Parameters

The principal aim of the thesis is to assess Tasmania's new Resource Management and Planning System in terms of:

- i) its incorporation of selected principles from the international benchmark principles of sustainable development which appear in the 'Declaration on Environment and Development' formulated at the United Nations Conference on Environment and Development in Rio De Janeiro in 1992;
- ii) its potential to facilitate the objectives of those principles as they were articulated at the Conference in Agenda 21;
- iii) its provision of means to avert or resolve recurrences of the kinds of environment and development problems and conflicts previously experienced in Tasmania; and
- iv) the lessons which can be learned from this attempt to develop and implement sustainable development legislation in Tasmania.

To provide the foundations for this assessment in chapters seven, eight and nine, the aims of the chapters are as follows. In chapter two I identify the circumstances under which certain problems and conflicts in development and environmental management occurred during the era of the *Environmental Protection Act 1973* and the *Local Government Act 1962*, that is, from 1973 to 1993. In chapter three I identify the weaknesses of this legislation by investigating the Acts' objectives, structures and mechanisms, and by interviewing those responsible for implementing and enforcing the Acts. The identification of these circumstances and weaknesses will provide the basis for assessing the potential to use the System to address recurring environment and development problems in Tasmania.

The Resource Management and Planning System is the product of a multi-faceted reform process. In chapter four I investigate the circumstances and events comprising this process to identify the influences that determined the System's final format. This investigation reveals the precursors to reform, and the lessons which can be gained from the process of formulating the System. The lessons which can be learned from the System's implementation will be gleaned primarily from reports commissioned by the State Government into operational facets of the System. Chapter five encapsulates my explanation for the System's statutory objectives, structure, instruments and mechanisms, and will be used to assess the System against a benchmark concept of sustainable development relevant to Tasmania.

Chapter Six begins Part Two of the thesis. In this chapter I establish, using the international benchmark for sustainable development set by the 1992 United Nations Conference on Environment and Development, a benchmark concept for sustainable development relevant to Tasmania. The benchmark comprises principles extracted from the Declaration on Environment and Development and, the objectives of those principles, including the measures to achieve them, embodied in Agenda 21. The principles of the benchmark consist of those principles of the Declaration on Environment and Development which are relevant to political, social and environmental circumstances within Tasmania, including the principles relevant to Tasmania's trans-boundary environmental responsibilities. The benchmark objectives and measures to accomplish those objectives are commensurate with the principles extracted from the international benchmark, as well as relevant to Tasmania's social and environmental circumstances.

1.4 Significance of the Research

This thesis provides an important and timely contribution to understanding issues relevant to the development and implementation of legislation intended to achieve sustainable development. It is based on an account of Tasmania's experience in its pursuit of sustainability, an account which, to my knowledge, is the first comprehensive documentation and assessment of this pursuit and its fruits to-date. In this context, the thesis provides an understanding of the circumstances and events that both catalysed the reform of Tasmania's environment and planning legislation, and informed the structure and content of the System which emerged from that reform. This understanding is extended through examination and explanation to the objectives, instruments and processes of the System, and through assessment, to the System's potential in certain crucial areas.

Within this account, the thesis contributes many perspectives to the issues encompassing sustainability. From one perspective, this work provides a retrospective picture of unsustainable development, with many of the environmental occurrences and attitudes towards development and the environment which underpin unsustainability etched in bold outline. From another perspective, it may be seen to provide a directory of circumstances, events and decisions, for those yet to begin formulating legislation designed to achieve sustainability, to embrace or avoid. For some, it may also offer a working inventory of the principles, objectives and decision-making processes necessary for such legislation. Above all else, however, this assessment of the System stipulates the issues still needing to be resolved if it is to furnish the means to the sustainable outcomes proposed at the United Nations Conference on Environment and

Development. Conversely, having assessed the System's current potential, one is positioned to question why that potential remains unrealised, if such is the case.

1.5 Methodology

The sources of material for this thesis consist of a) published literature, b) published and unpublished documents from the review of the former environment protection and planning legislation, and development of the policies and legislation governing the new System and c) data gathered from interviews and discussions with individuals responsible for implementing and enforcing the previous legislation, and for formulating the policies underpinning the new legislation. The published literature comprises books, newspaper articles, journal articles and scholarly reports. The published documents include parliamentary reports, parliamentary debates, political party manifestos, and discussion and information papers released by the Department of Environment and Planning (later the Department of Environment and Land Management) and the Forests and Forestry Industry Council of Tasmania. Literature searches for published literature and documents were undertaken at the libraries of the University of Tasmania, the Department of Environment and Land Management, State Parliament, and the Tasmanian State Library. Searches were necessary to provide the detail and understanding of the issues relevant to Tasmania's environment and development history, the reform process and its outcome, and the evolution of the concept of sustainability and the Federal and State Government initiatives taken in response to the 1992 United Nations benchmark concept. Searches were held concurrently with the interviews and continued throughout the project to enable me to remain abreast of the continual amendments to and their ramifications on, the System.

The unpublished documents consist of: internal Labor Government reports, memos and letters; correspondence between Green Independent Dr Gerry Bates and various participants in the reforms; correspondence between the Local Government Association of Tasmania and the State Government; and transcripts of seminar addresses by individuals directly involved in the reform process. The Labor Government documents were chosen according to their relevance to the reforms, from an assortment of private documents held by Peter Hay, the former personal secretary to Michael Aird, the Labor Government's Minister for the Environment. These documents, to which I was granted access, offered an extensive but incomplete record of the reforms. Dr Bates made available his complete file concerning the review process and the passage of the Bills through Parliament. Elizabeth Anderson, from the Local Government Association of Tasmania allowed me access to the Association's files relating to its role in the process. All the documents used were chosen on the basis of

their relevance to the reforms. Relevance was primarily determined by the two prominent threads which ran through most interviews and discussions with individuals involved in the reform process. These threads consist of i) the political machinations and ii) the circumstances and events central to the direction and scope of reform and the evolution of the structure and intent of the legislation. Unpublished literature and documents were collected from interviewees or by approaching individuals identified as having been involved in the reform process. An approach to the Liberal Government's Minister for the Environment was not attempted because of the Liberal Government's late entry into the reform process, and because it had already proved impossible to obtain co-operative access to the Department of Environment and Land Management.

Following many hours of discussions between Bob Davies, one of the System's two principal architects (the other being Richard Bingham), and myself concerning the need and potential for this project, the published literature began to appear as an anaesthetised version of the reform process. It generalised the problems associated with environment and development and the previous environment protection and planning legislation, and attempted to lead the public to a legislative destination that was poorly articulated in terms of sustainability. The unpublished literature and documents were similarly brief and inarticulate on those topics but hinted at political uncertainty and caution, not to mention the economic expectations which simmered quietly behind the reforms. All written sources raised as many questions as they answered in relation to Tasmania's environmental management problems and conflicts, the responsible authorities and their roles in relation to those problems and conflicts, and the characteristics of the previous legislation which could be attributed to those problems and conflicts. The sources also failed to confidently convey the intent of the individuals responsible for reviewing that legislation and directing the reform process, the attitudes of the State Labor and Liberal Governments to the reform process, and the Liberal Government's expectations for the new System.

To answer these questions I prepared a checklist of topics for in-depth interviews with persons whom I considered had a knowledge and experience of the issues that needed clarifying. The checklist comprised open-ended questions designed to elicit information but allow interviewees to introduce topics that had eluded my focus and understanding. The interviews were tape-recorded and transcribed.

Interviews were conducted with i) local government planning and environmental health officers who were responsible for implementing and enforcing the previous legislation, ii) State Government officers either currently or previously

responsible for soil conservation or for the development of soil conservation policy, iii) current and former State Government officers responsible for overseeing the review of the previous and formulation of the new legislation, and iv) personnel in private industry. The interviewees from local government were chosen from Municipalities with different development profiles which when combined constituted the principal modes of development in Tasmania. For example, the City of Glenorchy municipality is heavily industrial, the Kingborough Municipality is largely rural-residential and the City of Clarence municipality is principally urban. Interviews with local government officers were initially intended to provide information concerning the variety and prevalence of the environmental problems experienced in the sphere of local government for which there is little published literature. However, these interviews also provided perspectives from local government on the flaws in and, difficulties in implementing and enforcing, the previous legislation. The interviews proved invaluable for supplementing the views from those responsible for formulating the new legislation. Interviews with State Government officers associated with soil conservation were necessary because of the dearth of literature on the problems of soil management in Tasmania and the absence of soil conservation legislation. Interviews with current and former State Government officers responsible for overseeing the reform process provided the initial understanding of the previous legislation's inherent weaknesses and implementation problems, and were essential for understanding the events and circumstances that determined the direction of reform and influenced the final shape of the new legislation. An interview with John Parsons, the environmental superintendent with one of Tasmania's major industries, credited with the large scale pollution of one of the State's principal rivers, was also undertaken to obtain an industry perspective of the previous legislation, and its implementation and enforcement. In addition to these taped interviews, many hours were spent in discussion with individuals involved professionally in environmental management in Tasmania. These discussions were to clarify issues which remained confusing, gather information not publicly available, validate the perceptions of others, and often, to elicit information that I intuitively felt was being consciously concealed by others. These discussions were recorded in note form.

The interviews and discussions were extremely valuable. They allowed for greater comprehension of the published and unpublished literature and documents concerning Tasmania's development and environmental problems, and enabled the literature and documents to be placed in a context relevant to Tasmania's previous twenty years of development and environmental management. They also confirmed that the overall perception of the previous legislation by local and State Government

officials, authorities in private industry and professionals in environmental management was substantially uniform.

Difficulties in gaining a more comprehensive insight into the review and legislative development processes were encountered because of the obstacles to accessing relevant documents and interviews. Although material outlining the direction and content of the review process published by the State Government for public consumption was available, the many volumes of unpublished responses from interested parties to the Government's proposals during the consultation process were not. According to a spokesperson (name unknown) for the Department of Environment and Land Management, the responsible department, the unpublished documents were either destroyed or mislaid. Furthermore, permission to access the department's assistance in compiling environmental data and to discuss various issues with departmental employees was not granted. Interviews with individuals in the private sector involved in the processes were also impossible to obtain due to their disinclination or absence from the State. Although these obstacles were partly offset by permission for me to access a selection of private political papers highlighting aspects of the Labor Government's role in the reform process, they have detracted from a more detailed understanding of the political machinations and the broad public response to the review processes. It is also my opinion that some government employees were, periodically, guarded in their answers to questions during interviews. Moreover, some information gathered during discussions with State Government employees could not be used without compromising their employment.

To the degree that my skills have enabled, the process of interpreting the data supporting this thesis has been undertaken with rigorous objectivity. In this respect the literature and documentation, and data gathered during interviews and discussions have, except for the unavoidable interpretation in all communication, been used in a manner which I believe respects its intended meaning. This objectivity has been employed through a theoretical perspective underpinned by reformist convictions. These convictions include the need to implement sustainability in ways that will provide equity in resource availability for both present and future generations, especially in relation to the natural environment's life supporting functions. Furthermore, I am convinced that redressing the unsustainable patterns of consumption of the earth's natural resources is not only pivotal to sustainability, but will prove the most obstinate hurdle to achieving sustainability because of the importance of consumption to the self-identity, self-image, and emotional and mental well-being of the majority of humankind.

The data have been analysed using the tools of description, classification and connection outlined in Dey's (1993: 30-54) model for qualitative analysis. The description is 'thorough' (Dey 1993: 31) in that it encompasses the context of the reform process, the intention of the actors (which includes in this instance the role of concept and policy) within the process, and the process in which the actions (and concepts and policies) are embedded. The context, intentions and process are subsequently classified to enable their characteristics to be categorised into meaningful components. An example of this classification is the legislation underpinning the System and the United Nations benchmark concept of sustainable development. Classification has allowed the creation of a conceptual framework for undertaking an analysis of the substantive connections or causal relationships between the two data sets, that is, for one data set (the legislation) to facilitate the required outcomes of the other (the benchmark concept). Another example is the classification of the problems and conflicts surrounding development in Tasmania. This classification enables an analysis of the connections between the legislation (the use of its provisions to address) and those problems and conflicts. The analysis of these connections is made by examining the regularities, variations and singularities between the two data sets, as well as the intervening variables which, in these examples, include factors such as the intent, understanding or ability of those using the legislation.

There is substantial literature on the importance of triangulation as a strategy of founding the credibility of qualitative analyses (see Flick 1992, Jick 1979, Baxter & Eyles 1997). According to Baxter and Eyles (1997: 514) 'method triangulation' involves corroborating constructs based on information derived from at least two different methods. This work has been triangulated by using multiple data sets, multiple perspectives, and multiple methods of analysis. The multiple data sets comprise: primary literature such as correspondence, Acts and Regulations, discussion papers, parliamentary reports and debates; secondary literature such as books, newspapers, journal articles and scholarly reports; and material from interviews and discussions. Multiple perspectives are embedded in this work through the incorporation of the opinions and attitudes of a broad range of individuals to Tasmania's past, present and future development pathway. The individuals hailed from industry and conservation organisations, the bureaucracy, local government, State Parliament, environmental management consultancies, academia and commerce. The multiple methods of analysis comprising description, classification and connection are outlined above. In chapter two I begin this analysis.

The analysis has profoundly altered my understanding of sustainability and the efficacy for policy and legislation to address unsustainability in any meaningful and

lasting manner. I have found it impossible to avoid recognising that sustainability cannot be achieved by altering the characteristics of industry and manufacturing, nor by using mechanisms to encourage one set of characteristics while prohibiting another. The slow but certain degradation of the natural environment is founded on the attitudes which initiate and sustain development. Policy and legislation may slow the rate of environmental deterioration, but until these attitudes change, it can at best only delay the inevitable.

PART I

THE ANTECEDENTS

AND

OUTCOMES OF

REFORM

Chapter Two

Development and Environmental Management Prior to Tasmania's New Resource Management and Planning System

2.1 The Issues

This chapter presents examples of development and environmental management issues in Tasmania during the 20 year period between 1973 and 1993. During this period, development and environmental management was governed by the *Environment Protection Act 1973* and the *Local Government Act 1962* which enshrined the land use planning system. The overview focuses on development directly subject to these Acts, but also includes accounts of the proposed damming of the Franklin River for hydro-electric development, and of rural industries and forestry activities, which were development issues outside the jurisdiction of those Acts. These accounts are included in this overview because the Franklin Dam conflict was a momentous event in Tasmania's environmental, political and social history, whilst rural industry and forestry activities have been extremely problematical, and their activities impinge on a larger area of Tasmania's environment than other land uses. Collectively, they show that not only were politically and socially destabilising development issues, but also most of the State's land mass, beyond the jurisdiction of the main land use planning and environmental management functions.

The Acts and their implementation appear to have contributed to major development and environmental management problems. This chapter examines these problems and their underlying causes, whilst the characteristics of the legislation giving rise to those causes is addressed in chapter three. This analysis is undertaken to highlight the need for reform of Tasmania's environmental management legislation, and to enable an assessment, in chapter eight, of the capacity of the new System to be used to prevent or resolve recurrences of similar circumstances.

Discussion of these issues is presented according to the three tiered regulatory framework governing development in Tasmania prior to the introduction in 1993 of the land use planning and approvals legislation for the new System. The tiers comprise development under project-specific legislation, development under licence in

accordance with the provisions for scheduled premises in the *Environment Protection Act 1973*, and development under local government permit in accordance with the *Local Government Act 1962*.

2.2 Tough New Legislation

During the years prior to the ascent of the *Environment Protection Act 1973*, two issues dominated environmental management debates in Tasmania: increasing protest and conflict over the development of large projects, particularly hydro-electric development that involved inundating large areas of Tasmania's natural heritage, and escalating environmental degradation, especially of the State's rivers and urban air-sheds by pollution. In 1972 the Labor Government moved to address the issue of pollution, whilst ignoring major development issues.

The Minister for the Environment (Mr Everett, MHA) stated in Parliament that 'tough new legislation' would be introduced to ameliorate pollution (*Mercury* 29 Nov. 1972: 1)¹. Major industries with statutory pollution rights, predominantly pulp and paper companies, would be given four years in which to 'phase out their muck-raking' before the State Government invoked penalties as high as \$5000 plus \$1000 per day. Major potential sources of pollution, consisting of prescribed industries and municipal works, would be licensed and required to comply with conditions for operation. The State Government proposed strict supervision of industry to ensure that discharge standards were observed, and this surveillance was expected to result in substantial reductions of pollution, especially of Tasmania's two main rivers, the Derwent and Tamar. The result was the *Environment Protection Act 1973*.

The Minister also announced that a start would be made on *State Planning and Development Authority* legislation which would dovetail with the *Environment Protection Act 1973*. The former was to replace the *Local Government Act 1962*, its planning provisions having remained largely unaltered since the first planning legislation in Tasmania in 1944. This legislation never eventuated, and for the following 20 years development and environmental management was carried by the *Environment Protection Act 1973* and the *Local Government Act 1962*. The consequences were witnessed in the Gordon-below-Franklin Dam (Franklin Dam) and Wesley Vale Pulp Mill disputes.

¹Cuttings from the *Mercury* newspaper were used as a parliamentary record until Hansard was introduced in September 1979.

2.3 Ramifications of the *Environment Protection Act 1973* and *Local Government Act 1962* for Development and Environmental Management

2.3.1 *Development By Project-Specific Legislation: The Franklin Dam and Wesley Vale Pulp Mill Disputes*

In Tasmania, approvals of major development proposals invariably became political decisions enshrined in legislation specific to development. This situation occurred because both Liberal and Labor governments were determined to have major development proposals approved because of their potential contribution to economic growth. Consecutive governments were able to isolate and dominate the approval process for major development, when such development fell within the ambit of the *Environment Protection Act 1973* or the *Local Government Act 1962* because neither Acts mandated any approval process except the right of appeal against the granting of a development licence or land use permit. Furthermore, community dissatisfaction with the political domination of the approval process for major projects was magnified by environment protection legislation that focused primarily on controlling point-source pollution, and land use planning legislation concerned principally with the infrastructure requirements for urban subdivision (see chapter 3). Conversely, it was taken for granted by the executive branch that the approval of developments such as the Franklin Dam were solely political decisions to be made without reference to environmental protection and planning legislation. This presumption was largely a consequence of the Hydro-electric Commission's (HEC's), a State Government statutory authority, dominant role in power policy, and because the State Government did not deem the environment protection legislation applicable to such developments because of its focus on pollution control. Furthermore, because the Franklin Dam was to be built on and inundate land appropriated from State forests, its construction was not subject to land use planning legislation.

The consequences of these weaknesses in the legislation were exemplified in the Franklin Dam and Wesley Vale Pulp Mill disputes that occurred during the 1970s and 1980s respectively. The disputes revealed the diversity of economic, environmental, political and social problems and conflicts associated with major development. The inability of the *Environment Protection Act 1973* and the *Local Government Act 1962* to deal with major development issues was manifest in the apparent disregard by consecutive State governments for the impact of development on the environment; refusal to acknowledge public concern and the legitimacy of public involvement in the development-approval process; the absence of government accountability to the public for decisions concerning policy and development; and the lack of a formal development-approval process incorporating an adequate assessment of impacts.

In the Franklin Dam dispute these issues led to political instability and community fragmentation. In the Wesley Vale dispute, compounded by secrecy and deception by the Government in order to eliminate public interference in the project, these matters were instrumental in the loss of a potentially significant economic investment, and revealed the risks faced by future investors in Tasmania. Both disputes resulted in Federal Government intervention where the projects were ultimately terminated.

2.3.1.1 The Franklin Dam

In 1934 the Liberal State Government implemented a policy of hydro-industrialisation. This policy involved developing the State's potential for hydro-electric power generation to attract major resource development industries to the State with offers of large volumes of low cost electricity. In 1972, following 12 years of public criticism and protest, the HEC flooded Lake Pedder, continuing consecutive State governments' adherence to this policy. UNESCO (1970: 218) described the lake as 'a unique wilderness of incomparable significance and value' and condemned the proposal as 'the greatest ecological tragedy since European settlement in Tasmania'. Neither was the environment the only casualty. Public trust in the political process was deeply affected, for as Southwell (1983: 19-29) claimed with deep despair, public protest had been contemptuously ignored by the State Government and the HEC amid circumstances of political turmoil, broken promises, deception and secrecy.

A Federal Government Committee of Inquiry was undertaken in 1974 after the damming of Lake Pedder. Its members recommended a revision of development-approval procedures to avoid similar confrontations. The Committee severely questioned both the secretive and non-participatory style of policy-making by the HEC, and the structure of government that reinforced the power of the HEC within the State Government decision-making process (Commonwealth Department of the Environment and Conservation 1974: 47). This power was derived from the HEC's unique status of functioning without Ministerial control as the self-appointed and sole developer of government energy policy rather than as an adviser to the government. According to Thompson (1981: 25), it was an authority unrivalled by any other public authority in Australia. The Labor Government of Premier Eric Reece ignored the recommendations of the Committee of Inquiry, precipitating public confrontation on a scale never before seen in Australia.

The subsequent Franklin Dam dispute primarily concerned the environmental management of South-West Tasmania, and involved conflict amongst the HEC, the

Labor Government, and the conservation movement over the direction of electricity generation in Tasmania. Tighe (1986) described the dispute as a clash between the 'economic growth and efficiency' paradigm of the HEC and the new 'environmental paradigm' of the conservationists. The HEC's preferred option was an integrated hydro-electric power development that, in its initial stage, would involve damming the Gordon River below its confluence with the Franklin River (Franklin Dam), and later, damming the Gordon River above its confluence with the Olga River (Olga Dam). Thompson (1981: 23) estimated that the initial stage would flood 35 percent of the State's Huon Pine habitat and destroy over 35 percent of the remaining South-West Wilderness, including flooding the Franklin River. The Government's preferred option was a combination of thermal-hydro power generation involving development of the Olga Dam only, supplemented by a coal-fired thermal power station. Thompson (1981: 22) estimated that this second proposal would flood 82km² of the Gordon and associated river valleys and destroy 12 percent of the remaining habitat of the Huon Pine. It would protect the Franklin River, however. However, the conservation movement was emphatic that all development cease in South-West Tasmania to protect its wilderness value.

Because the Commission's methods of operation and political power, previously questioned by the 1974 Federal Committee of Inquiry into the Lake Pedder dispute, had remained unaddressed by State government, the HEC was again the catalyst in the ensuing dispute. Furthermore, having enjoyed the privileges of political influence and the control of energy policy since 1914, its Board was determined that these roles would continue unchecked. This determination became increasingly evident when Labor Premier Lowe sought to place the HEC under Ministerial control in 1978. HEC management refuted the need for such control and engaged Ken Gifford QC to prevent its subservience to the executive branch. Similarly, in that same year the State Government decided that the HEC's preferred option of the Franklin Dam was unacceptable, and requested that the HEC propose a range of alternatives, including alternatives to hydro-electric power generation. The HEC then approached the State Legislative Council, to overturn the decision on the grounds that the Government was deviating from the traditional hydro-industrialisation policy.²

In response to the State Government's request for this range of alternatives, the HEC submitted a Report outlining its preferred option to be the Franklin Dam, dismissing any alternative means of power generation as uneconomic in terms of generation cost, and inadequate in terms of meeting future energy needs. The Report

²The Legislative Council is the Upper House in a bicameral parliament where the Government sits in the Lower House.

concluded that 'the benefits to be derived from development of the water power potential of the Lower Gordon, King and Franklin Rivers far exceeds any losses that thereby may be incurred' (HEC 1979: 74).

This Report of almost 2000 pages was highly criticised. For example, Professor John Burton, head of Resource Engineering at the University of New England, was reported to claim that the HEC had selectively presented information to justify its choice of the Franklin Dam irrespective of any impacts and economic implications flowing from its construction (*Engineers Australia*, 6-19 Feb, 1981). Kellow (1983: 268-71) and Lowe (1984: 167) supported this opinion, proposing that the assumptions about the engineering difficulties of alternative projects and the comparatively high cost of thermal power generation were debatable, and made the HEC-favoured option look more attractive than the thermal alternatives. Kellow was also highly critical of the Environmental Impact Statement in the Report since no value was placed on the wilderness lost as a result of the dam. These factors, combined with the secrecy and exclusivity of the HEC, created significant difficulties for the conservation movement, for they restricted conservationists' ability to question and analyse, and to articulate alternative policies.

Premier Lowe set out to change the traditional processes for energy policy, assuring the public that any decision on future energy policy would follow the recommendations of a Joint Parliamentary Committee (*Mercury* 17 Oct. 1979: 1). These recommendations were to be based on the findings of the Co-ordination Committee to be established to investigate the issue through full public discussion and thorough analysis of all options. The HEC continued its antagonistic stance to this process, making it very clear that the State Government's approach to determining energy policy was unacceptable. The Liberal Opposition then announced that it would not participate in the Joint Parliamentary Committee. Thompson (1984: 115) and Green (1981: 143) suggested that this withdrawal occurred because the Liberals sensed a chance to split the Government over future energy policy. Their strategy left the Labor Government with no alternative but to make its own recommendations based on the Co-ordination Committee's Report. The Legislative Council then announced that because of the Liberal Opposition's refusal to participate in a Joint Parliamentary Committee, it would establish an Upper House Select Committee of Inquiry to investigate the general question of future power development in Tasmania. According to Lowe (1986: 110), Green (1981: 143), and Southwell (1983: 51), this manoeuvre simply provided an avenue for the Council to justify their support for the HEC's preferred option, given the HEC's influence in the Legislative Council.

By July 1980, the State Government was beginning to experience increasing pressure from both supporters and opponents of the Franklin Dam. The Tasmanian Chamber of Industries had established a working party of the State's 13 major bulk power consumers in support of the dam, whilst the Hydro Employees Action Team was formed to represent the HEC and its employees' interests. According to Green (1981: 171) the Hydro Employees Action Team, supported in private by HEC management, had created the extraordinary situation of a semi-autonomous government instrumentality opposing State government policy. The major opponent of the dam, the Tasmanian Wilderness Society (TWS) led by the determined and charismatic Dr Bob Brown, had concentrated on raising the profile of the Franklin River, and prominent international identities were now espousing its beauty. The Society had organised rafting trips down the Franklin for the media and these high profile identities, a rally in Hobart on 6 June opposing any further development in the South-West had attracted 6 000 (*Mercury* 7 June 1980: 1), and Yehudi Menuhin had become the Tasmanian Wilderness Society patron. According to Thompson (1984: 107-8), the HEC's mouthpiece, the Hydro Employees Action Team, was beginning to see the conservation movement as a threat and its members began attacking the integrity and intelligence of the TWS. Thompson claimed that these attacks only reinforced the polarisation of community attitudes, effectively creating clearly defined sides, the conservationists and those supporting the HEC.

The Co-ordination Committee's *Energy Conservation Strategy* on options for future power policy in Tasmania recommended a combined thermal-hydro power development. Thompson (1984: 114) claimed that this recommendation was curious considering that 477 of 487 public submissions were opposed to further development in the South-West. Furthermore the recommendation followed an ad hoc approach that involved a government departmental paper war rather than public participation on resource development matters, and underlined the urgent need for statutory procedures (Thompson 1981: 86-89). The HEC management was infuriated at the strategy, attacking it as naive, and claiming that only the HEC was competent to judge such complicated technical matters.

The State Government's greatest worry over power development policy concerned the comparative levels of employment created by the development options. The HEC's only assessment of employment in its Report to the Government on power generation alternatives was that employment losses in the event of the construction of a coal-fired power station in conjunction with the Olga Dam, instead of the Franklin Dam, would total between 2500 and 3000 (HEC 1979: 86). When HEC management later conceded that the construction of the Olga Dam would create a greater number of jobs

than the Franklin Dam, Premier Lowe believed the Government had found a working compromise (Lowe 1984: 113). His Cabinet immediately approved the Energy Conservation Strategy involving the development of the Olga Dam in conjunction with the conversion to coal of the existing oil-fired thermal power station at Bell Bay. Having arrived at this decision, Cabinet then agreed to another of the Strategy's recommendations: to proclaim the Wild Rivers National Park which would incorporate and protect the Franklin and Lower Gordon Rivers.

The Energy Conservation Strategy was ratified by the Parliamentary Labor Party in July 1980, and was welcomed by those seeking a compromise position on the State's future power needs. However, a resolution was not to be found by compromise. The Strategy was vilified by the proponents of hydro-industrialisation, and was insufficient for members of the conservation movement, who were still demanding an end to any further development in Tasmania's South-West. The Liberal Opposition derided the Strategy as a costly compromise designed merely to allow rafters to 'frolic down the river', while former State Labor Premier Reece, a passionate believer in the policy of hydro-industrialisation, publicly committed himself to overturning the Labor Government's decision. Reece, former State Liberal Premier Bethune, and former HEC Commissioner Knight then united to jointly head the Association of Consumers of Electricity and, with the Hydro Employees Action Team, and the group of major power users gathered by the Tasmanian Chamber of Industries, proceeded to undermine the Government's decision.

In the meantime, having agreed upon a Strategy for power development, the State Government set about legislating for the Olga Dam. In December 1980 the legislation was approved in the House of Assembly and passed to the Legislative Council only days before the Report from the Council's Upper House Select Committee of Inquiry into Future Power Development in Tasmania was tabled. As expected, that Report recommended proceeding of the Franklin Dam. The Legislative Council's response to the Government's legislation was to substitute the Franklin Scheme for the Olga Scheme. Although the President of the House had ruled this course of action as unconstitutional, it was nevertheless pursued, and was the first ever defiance by the Legislative Council of such a ruling. Thompson (1981: 84) proposed that the situation arose because the majority of members of the Legislative Council chose to ignore the advice given to the President of the House by the Solicitor-General, choosing instead to follow the advice from the HEC's legal adviser, Ken Gifford QC. Premier Lowe believed the Legislative Council's response to be unconstitutional, given that it is a House of Review, elected without mandate, and able only to pass or reject legislation (Lowe 1984: 141). The most experienced Independent member of the Council, Bill

Hodgeman QC, interpreted the activities of the majority of the members of the House as advocating 'anarchy' (Lowe 1984: 141). A meeting of the managers of both Houses of Parliament failed to resolve the deadlock which, Hall (1986) argued, resulted in the most serious parliamentary crisis in Tasmanian history.

In March 1981, three months later, Parliament was still deadlocked. Premier Lowe decided on two courses of action. He proclaimed the Wild Rivers National Park and forwarded its nomination for World Heritage listing to Prime Minister Fraser, with the intention of removing any possibility for future development of the Franklin and Lower Gordon Rivers. He also decided to inform the public of the implications of the Legislative Council's actions, hoping to bring pressure to bear upon the Legislative Council to withdraw its amendment to the legislation. It was a major political misjudgment. It resulted in the Parliamentary Labor Party reconsidering its support for the Olga Dam in favour of the Franklin Dam, fearing that the Legislative Council would withhold monetary supply to the Government, thus forcing an election (Green 1981: 175).

The dispute was gaining national importance due to the continued activity of the conservation movement. The Federal Government entered the debate with the Australian Democrats and Federal Parliamentary Labor Party supporting a Senate Select Committee of Inquiry into the need for a new power scheme in South-West Tasmania. Ten months into the deadlock, and in order to keep the Federal Parliament from interfering with State Labor Party policy, Premier Lowe decided to hold a (public) referendum (Lowe 1984: 152). After stating that he believed a democratic option would include a 'no dams' vote, he was overruled by Cabinet, subsequently challenged and defeated as Party leader, and replaced by Harry Holgate. In November 1981 Lowe resigned from the Australian Labor Party (ALP) because of his refusal to accept what he believed was interference and power-broking in the affairs of State Government by the Parliamentary Labor Party. The Parliamentary Government Whip, Mary Willey, also resigned and they both joined the lone independent, Dr. Sanders, on the cross bench; a move which deprived the Government of its majority in the House of Assembly.

Members of the Tasmanian Wilderness Society began campaigning for what they saw as the only remaining option to protect the South-West: an informal 'no dams' vote. Both the Government and Opposition parties continued to refuse to acknowledge public involvement in the development approval process. The Government announced that a dam would be built in the South-West regardless of the referendum outcome, whilst the Opposition Liberal Party Leader, Robin Gray, promised that the only dam he

would consider building was the Franklin Dam. The referendum was held with numerous reports of intimidation by pro-dams supporters attempting to minimise informal voting. The results showed that 47 percent of votes supported the Franklin Dam and 8 percent supported the Olga. Forty five percent of votes were informal, including 33.25 percent which endorsed 'no dams' (Newman 1984). The size of the 'no dams' vote caused such a dilemma for the Government that on 14 December 1981 Premier Holgate prorogued Parliament for almost four months.

During this time the Federal Government nominated the enlarged South-West National Park, consisting of the South-West National Park, the Wild Rivers National Park, and the Cradle Mountain-Lake St. Clair National Park to the World Heritage List, potentially granting protection to the Franklin and Gordon Rivers. By the time Parliament resumed in Tasmania, the State Government had reversed its policy and now supported the Franklin Dam, but members of the Opposition and the cross bench defeated the Government by a vote of 'no-confidence' in its handling of power policy.

The Labor Government was defeated in the following state election and the new Liberal Government under Premier Gray authorised work to begin on the Franklin Dam by enacting the *Gordon River Hydro-Electric Power Development Act 1982*. Work on the development programme for the Franklin Dam was rapidly escalated, whilst Premier Gray simultaneously pressured the Federal Liberal Government to withdraw the World Heritage Listing nomination. With the Federal Government's refusal, the Deputy Premier then flew to Paris to lobby the World Heritage Committee to refuse the nomination. The conservation movement headed by Dr Bob Brown and the Tasmanian Wilderness Society had also realised that Federal Government intervention in the affairs of Tasmania but for entirely different reasons was imperative, and were now working frantically on the mainland and between States, pressuring politicians of all parties to halt the 'Dam', and preserve the South-West.

Southwell (1983: 55) believed that Federal politicians were finally persuaded to intervene in the Dam crisis in favour of the Greens after a Federal by-election in Canberra in which 41 percent of voters endorsed 'no dams' position. Following that by-election the ALP National Conference voted overwhelmingly to support the conservation of South-West Tasmania, and the Australian Democrats introduced a Bill into Federal Parliament to give effect to the *Convention for the Protection of the World Cultural and Natural Heritage*. The Democrats' action effectively raised legislation to enforce the Federal Government's power to stop the dam development. The Bill was followed by the tabling of a Report from the Senate Select Committee which concluded

that the construction of any new dam would be unnecessary within 10 years, and which recommended that the Franklin River be protected as a matter of national priority. The Federal Liberal Government refused to intervene.

At this point, members of the conservation movement decided to establish a blockade of the work sites which had been set up on the Gordon River. Public support for the blockade was staggering. A total of 2613 people from across Australia registered at the blockade, with 1272 later arrested for trespassing. The blockade did, however, create a depth of anger amongst pro-dam supporters. One of the incidents resulting from this anger was the assault on Bob Brown, the Tasmanian Wilderness Society President. Although the blockade lasted approximately two weeks it failed to gain Federal Government intervention, and the conservation movement's concerns turned to keeping the momentum from the blockade alive in the following months.

These concerns disappeared, however, when the Federal Liberal Government called a surprise election and the Federal Labor Opposition led by Bob Hawke promised to protect the South-West wilderness region if elected to government. The Tasmanian Wilderness Society immediately began targeting 17 key national electorates in an endeavour to have the ALP win power. Its endeavours were aided by the South-West region receiving increased national prominence when approximately 20,000 people marched in Hobart in support of the conservation of the Franklin. According to Thompson (1984: 175), this was the largest nature conservation rally in the planet's history. The Australian Labor Party was elected to Federal Government and immediately passed the *World Heritage Properties Conservation Act 1983*, ensuring the preservation of the enlarged South-West National Park, and requiring an immediate halt to hydro-development in the South-West.

Premier Gray's opinion of the Franklin was that for eleven months of the year it was 'nothing but a brown ditch, leech-ridden, and unattractive to the majority of people' (*The Examiner*, 24 Sept. 1982). His determination to develop the hydro-electric potential of South-West Tasmania resulted in an appeal to the High Court of Australia on the constitutionality of the *World Heritage Properties Conservation Act 1983*, but in a landmark judgement in Australian Federalism, the High Court upheld the Commonwealth legislation.

2.3.1.2 Implications of the Dispute

The Franklin Dam dispute constituted a level of social conflict and political instability over the management of the environment never before witnessed in Australia. The dispute combined apparent disregard by successive governments for the impacts of development on the environment, and the refusal by those governments to acknowledge public concerns for those impacts, even when so unambiguously declared through a public referendum. A pre-determined and clearly defined formal approval process might have led to such conflict, given both the Labor and Liberal Governments' determination to have the project proceed, but the absence of a formal process contributed to the escalation of the conflict by allowing consecutive governments to dismiss the concerns of the conservation movement as nothing more than uninformed interference. In this context the absence of environment protection and land use planning legislation that provided a formal approval process was clearly evident. Government could stifle legitimate public involvement in policy and project-development decisions, and could and did create substantial difficulties for constructive public participation by excluding the public from any meaningful understanding of the reasons for and the consequences of the development.

Central to a formal approval process such as that presupposed in environment protection and land use planning is the assessment of the environmental impacts of development. Governments were under no obligation to undertake such assessments (see ch. 3.2.3), and without adequate understanding of the development of the Franklin Dam, the conservation movement was uncertain of its own conclusions. The absence of formal assessment processes effectively removed the necessity for state accountability to the community, allowing it to justify any decisions using technical information that was difficult to validate and at times difficult to understand, or both.

The combination of these factors allowed the dispute to dissolve into an unashamed struggle for power within and between parties in both State and federal political spheres, and encouraged the ugliest of political behaviour. Tasmanian State politicians exhibited a previously unseen level of mayhem, blatant opportunism and struggle which suffocated all due process. Jones (1981: 57-59) contended that the struggle over the Franklin Dam exposed the growing abandonment of the principle of political representation of legitimate public views in State Parliament, and the overturning of political precedent. He argued that this state of affairs had resulted in a breakdown of the traditional system of government, and concluded that the dispute revealed that politicians had come to think that 'anything goes'.

2.3.1.3 Wesley Vale Pulp and Paper Mill

The Franklin Dam dispute did not engender a State Government review of the economic strategy based on hydro-industrialisation. According to Walker (1992: 234), Premier Gray's planning for future hydro-electric development in the South-West, using the \$500 million Commonwealth compensation for terminating the Franklin Dam project, revealed the continuing intent to encourage high energy, low labour content industry to Tasmania. Neither did the dispute promote any recognition by Government of the need for an adequate statutory process governing major project development, nor even acknowledgment of the legitimacy of public participation in the development approval process. To the contrary, in response to a dispute over the siting of a silicon smelter at Electrona in Southern Tasmania, the Government introduced legislation (the *Development Control Bill 1986*) which circumvented any environmental restraints relating to all Acts, regulations, laws, and by-laws, delivering to the Government sole jurisdiction over the development without any safeguard processes (Hall 1986).

Walker (1992: 240) proposed that a possible explanation for these attitudes lay in the realities of the Australian political economy. These realities largely restricted Australian State Governments, because of their dominance by the Federal Government, to rely upon the exploitation of their natural resources for revenue income. Resource exploitation involved fierce competition both nationally and internationally, requiring inducements such as subsidised electricity, minimal royalties, and watered down or unenforced environmental standards. Walker argued that dependence on these resources combined with the need to be competitive results in a conflict between principle and expediency, tempting the States to maximise short term economic gain, rather than to recognise the values which usher in preserving resources for an optimal long term return.

The Wesley Vale dispute which occupied political centre stage in Tasmania between March 1988 and March 1989 was primarily a conflict over the pulp and paper mill's location and the disposal of its processing wastes. The project was an attempt to maximise short term economic gain. In this context the project foundered on the issues of siting and pollution, the primary foci of the Acts under examination in the next chapter. However, had the protests over these issues failed to halt the project, the forest resource issue had the potential to become central to the dispute. In this respect it was argued that the increase in woodchips needed to feed a pulp mill the size of that proposed at Wesley Vale required a substantial increase in the State woodchip quota (Economou 1992: 44), whilst a branch of Tasmanian scientists, United Scientists for Environment and Resource Protection (USERP), expressed their concern at the

possibility that available forest resources to meet the woodchip requirements were overestimated by up to 30 percent. This sentiment was supported by Chapman (1992: 25), who argued that in the 1980s the forest resource was already being depleted more rapidly than it could be replenished from regrowth and re-forestation, and with no regard for habitat integrity. Notwithstanding the evidence, the Liberal Government continued to deny that the increase would need to come from harvesting National Estate and World Heritage forests.

Walker also suggested that this maximised throughput of resources for short-term gain could result in a strong, at times authoritarian, commitment to development at any cost. This commitment was pervasive in the Wesley Vale dispute, excluding all parties and processes, including State Parliamentary processes, from any involvement which threatened to obstruct or delay the project. The impotence of the environment protection and land use planning legislation to be used to effectively negotiate the two issues of pollution and the mill's location was central to the dispute. Indeed it was responsible for the loss of a potentially significant investment and for the creation of future uncertainty for investment in Tasmania.

The Wesley Vale proposal by joint partners North Broken Hill and Noranda Forests Incorporated of Canada involved building a \$1 billion bleach eucalypt kraft paper mill at Wesley Vale in the North-West of Tasmania. The project was extremely attractive to both State Liberal and Federal Labor Governments because it offered employment and political profile in a region of high unemployment (Economou 1992: 42), and substantial economic benefits for the federal balance of payments (Bain 1990: 90). The residents of Wesley Vale were disturbed at the Companies' proposed site, fearing the impacts of atmospheric discharges of sulphur dioxide and the construction of a 13.5km rail spur across adjacent productive farmland. They were also uncertain about the mill's consequences for the local rural economy and quality of life. In response to these concerns, a local group calling itself the Concerned Residents Opposing Pulp Siting (CROPS), led by Christine Milne, who became leader of the Greens in Tasmania's Parliament in 1994, was formed, claiming that there were more appropriate sites in the region. Milne (1990: 84) argued that CROPS' concerns were heightened when the Companies' environmental review of the project offered no qualitative or quantitative information to justify the Wesley Vale site. The Department of the Environment, responsible for assessing the Companies' environmental review, questioned their reasons for preference for the site, whilst the State Government's own consultants recommended that the location should depend upon environmental requirements for effluent treatment. In response, the Government requested the Companies to provide information on the feasibility of relocating the mill.

The Companies immediately threatened to withdraw the project if its preferred site was not accepted. The State Government complied with the Companies' demands by signing an agreement on the Wesley Vale site. This occurred ten days before the environmental impact statement (EIS) addressing the Wesley Vale site was released to the public. Chapman (1992: 24) asserted that the Government justified this decision by citing a second Report from its consultants which recommended Wesley Vale as the preferred site. This situation not only signalled Government compliance with the Companies' demands and its disregard for development processes, but as Milne (1990: 85) concluded, it also demonstrated the lack of recognition of a public stake in these processes.

The next stage of the dispute occurred over timber royalties. Australian Pulp and Paper Mills (APPM), a subsidiary of North Broken Hill, was at that time paying \$2.99 per tonne for its timber resources (Chapman 1992: 27). In an effort to increase royalties the State Government requested \$12.60 per tonne. Dr Bob Brown, at the time a Member of the House of Assembly in Tasmania, argued that this was an unacceptable return for the State. It would result in the Companies paying \$20 million annually, and although paying an additional \$11 million in wages, it would leave an annual profit for the Companies of between \$100-\$150 million, most of which would leave the State. The Companies responded with an offer of \$4.63 per tonne as an average across all APPM timber resources, and again threatened to withdraw the Wesley Vale project if their offer was refused. The State Government later announced that an agreement of \$12.60 per tonne had been reached on the royalty figure, but when the *Northern Pulp Mill Agreement Bill 1988* was introduced to Parliament it was discovered that the royalty was in fact \$11.03 per tonne (Chapman 1992: 27).

Public protest over the mill site and timber royalties intensified when the State Government announced that the normal public appeal process under environment and planning legislation would not apply to the Wesley Vale project. Milne (1990: 85) was emphatic that the Government's actions were designed to enable special legislation to be fast-tracked in an effort to meet the Companies' timetable. The Government's justification for its actions, according to the *Advocate* (19 Oct. 1988), the main daily newspaper in northern Tasmania, was that the only people who would make use of such provisions would be the anti-development 'Greenies ... wishing to stall' the development process. Economou (1992: 52) argued that the Government's decision to eschew meaningful public participation was based on a clear set of value judgments, specifically that development would serve the greater (community) good and that the community at large would be in harmony with the decision, whilst opposition to the project would emanate only from a self-interested minority. He asserted that the dominance of these

values meant that the policy-making process was weighted from the outset in favour of development interests.

Revoking the right to appeal was followed by an announcement by State Government and the developers that all difficulties had been resolved and the mill would proceed. It was stressed by all three parties that the Companies were anxious to eliminate any need for Ministerial exemptions under the *Environment Protection Act 1973*, and were intending to spend \$100 million on pollution control measures. Although the right to appeal had been revoked, the Companies released their EIS and the public was given one month to comment. Three days before the period expired, the Government introduced the *Northern Pulp Mill Agreement Bill 1988* into State Parliament. It referred to two conditions which had to be met before the project could commence: the acceptance of the EIS by the State Government, and project approval by the Commonwealth Government's Foreign Investment Review Board, necessary because of Noranda's \$500 million investment in the project, the latter essentially a rubber stamp.

CROPS now turned its attention to the environmental issues in the EIS. The mill was expected to process 1.8 million tonnes of woodchips into 440,000 tonnes of bleached pulp annually (Toyne 1994: 107). CROPS members argued that the Wesley Vale site was preferred by the Companies because it was nearer the sea and would enable the ocean dumping of its effluent - approximately 60 million litres per day, containing 1.9 tonnes of organically bound chlorines which could contain dioxin, a toxic and bio-accumulative substance (Chapman 1992: 28). The Tasmanian Fishing Industry Council was also concerned about the dumping of the toxic waste, fearing pollution of Bass Strait. The company denied that this would occur, whilst the Government described the comment as cynical.

Representatives from the Companies professed that the EIS had been completed in accord with the provisions of the *Environment Protection Act 1973* and concluded that it answered fully all questions raised by the opponents of the mill, and contained a full report on the environmental standards as required by the Foreign Investment Review Board. In the Report it was contended that 'in the final analysis the proposed development is considered to offer benefits to the community as a whole so substantial as to more than offset the limited range of adverse effects which will result' (Chapman 1992: 31). The EIS only served to increase the fears of the community about the likely effects of waste products discharge. Christine Milne, now joined by Peter Patmore, the State Opposition spokesperson on environmental matters, again warned of

the dangers to Bass Strait from toxic emissions. CROPS was joined by Greenpeace International in its attack on the EIS, whilst representatives from six organisations, the Tasmanian Wilderness Society, the Tasmanian Conservation Trust, the Abalone Divers Association, the Latrobe Municipal Council (the local government responsible for Wesley Vale), and the local Port Sorell Tourist and Progress Association, came together to protest at the Government's refusal of the right to appeal as laid down in the *Environment Protection Act 1973* (Tasmania 1973, Part IV, s. 24).

The EIS was also criticised by the State Government's Department of Sea Fisheries as inadequate in addressing the effects of the discharges on the marine environment, and by the State Department of Environment which under the terms of the *Northern Pulp Mill Agreement Act 1988*, was required to approve the EIS and to draft the environmental management guidelines before the pulp mill could proceed. The Government remained adamant that the environmental standards would be the most stringent in the world, whilst the Company continued to reassure the public that there would be no environmental harm from the mill. This rhetoric was despite claims and supporting evidence from two visiting academic specialists from the United States that there was a lack of detail in the EIS on the effects of toxins, specifically dioxin.

The Companies' response to the criticism of the EIS was emphatic: it had been prepared in accordance with the standards and procedures jointly issued by the Department of the Environment, and the Commonwealth Department of Arts, Sport, Environment, Tourism and Territories. According to Alan Jamieson (project manager for North Broken Hill), the standards and procedures for the EIS were forwarded only three months before the EIS was completed, and after 15 months badgering of both the State and Federal Governments in an effort to obtain them (see Davis 1990: 99). Milne accepted that the EIS process was deficient from the start, but claimed that the deficiencies should not have affected the minimum requirements of the EIS in terms of baseline and scientific data for predicting the environmental impacts of the project (Davis 1990: 99).

The Companies' consultants prepared a 140 page Addendum in answer to 85 questions from the Department of Environment regarding the EIS. With this Addendum the Department of Environment undertook its assessment of the EIS and formulated the guidelines for the mill's environmental management plan. The Companies again threatened to withdraw if the guidelines made the project uneconomic. In an unfamiliar stance, the State Government responded by asserting that it would not be intimidated or dictated to by the Companies. Suspicious, Chapman (1992: 35) speculated on whether

the Government was in collusion with the Companies because its concessions to the latter so often contradicted its public statements. Indeed, the Federal Minister for the Environment, Senator Graeme Richardson suggested on numerous occasions that the State Government was backing off and compromising its original standards.

State Parliament was recalled on 10 January 1989 to debate the Department of the Environment's guidelines for the environmental management plan. Throughout the community there was strong criticism that the guidelines were too accommodating to the Companies, that they were open to interpretation, and it was of major concern that the debate was to be held only two days after the guidelines were announced. The Government attempted to allay this criticism by allowing the Director of the Department of the Environment to outline the Department's assessment of the project to Cabinet before Parliament sat. The Director's assessment only served to heighten community criticism of the guidelines for the environmental management plan when he concluded that in his judgement the plant was a 'chemical plant rather than a pulp mill' (Chapman 1992: 36). The Parliamentary debate dealt with the issues of noise, odour, effluent and tertiary treatment, but the issue that was causing the greatest concern was the discharge and effects of organochlorides on the Bass Strait and its fisheries.

Parliament approved the guidelines for the environmental management plan. The Government immediately announced that the project was back on track and that any misunderstandings with the Companies would be quickly resolved. The Companies, however, requested further negotiations with the State Government over the intent of the guidelines, subsequently issuing an ultimatum that unless they were reconsidered, the agreement to development would be terminated. The Minister for the Environment emphasised that the guidelines were non-negotiable, and later threatened to resign should the Government allow them to be weakened.

During this period the Commonwealth Department of Environment also began discussions for its assessment of the project for the Commonwealth Foreign Investment Review Board. It was these discussions, Chapman (1992: 37) concluded, which forced Premier Gray suddenly to admit publicly that although there was a potential dioxin problem with the mill, it was unlikely that this problem would eventuate. Furthermore, the Premier guaranteed that if dioxins were produced, the mill, in accordance with the guidelines, would be closed. It became clear, however, that such a closure of the mill would only be subject to incontrovertible proof that the emissions were harmful to marine life in Bass Strait.

Wesley Vale's economic value to the State had been a contentious issue for some time. When the Report commissioned by the Companies on the mill's economic ramifications for the State was publicly released, the economic issue rapidly entered the debate. The Report reiterated the Companies' earlier prediction of 1500 temporary construction and 400 other full time jobs, and a \$300 million advantage to Australia's balance of payments. The anti-mill lobby's main contention was based on the previous experience with the predictions associated with the Electra silicon smelter. The smelter had been fast-tracked by the State Government which asserted through local newspaper advertisements that up to 1000 jobs would be created (Chapman 1992: 38). In its second year of operation, it had provided only 70 jobs. Furthermore, because of community protest at the levels of noise and dust it had later been forced to close for process modifications which would enable it to meet Government environmental standards, that is, to operate without Ministerial exemption. The economic argument put forward by Independent MHA Bob Brown was that the employment benefit would be offset by the cost involved in State subsidised infrastructure such as roads, the replacement cost of the huge forest resource the mill would require, and because of the uncalculated losses to farming, fishing, and the tourist industry. The \$300 million benefit to the Federal Government also came under criticism because it was of no direct advantage to Tasmania, and because the cost-benefit study done by the State Government to arrive at that figure was withheld from public scrutiny.

After reaching agreement with the Companies over the interpretations of the guidelines for the environmental management plan, Parliament was recalled, extraordinarily, by an announcement made on North Broken Hill letterhead (Milne 1990: 85). This raised the issue of who was controlling State development policy. The issue assumed evermore serious proportions when the Premier stipulated that the interpretations would be discussed, but at the Companies' insistence, no alterations would be made to them. To widespread disbelief the Premier then revealed that the Government and Companies had signed an agreement for the environmental management plan, using the guidelines as interpreted. Chapman (1992: 42) and Toyne (1994: 108) asserted that this stance by the Companies had been at the insistence of Noranda and other overseas pulp manufacturers who were concerned about the effects of the State Government environmental demands on future Australian and international investment plans. These demands were especially important as the Canadian Government was currently investigating Noranda's mills in Canada with a view to reducing the levels of organochloride effluent. The signing of this agreement was seen as an extraordinary occurrence because the guidelines had not been accepted by Parliament, and because the agreement between the Government and the Companies

should not have been signed until the proposal had been approved by the Foreign Investment Review Board.

State Parliament sat to discuss the interpretations of the guidelines for the environmental management plan amidst such noisy protest that the Speaker of the House cleared the public gallery. No one doubted that the original guidelines had been modified, but the Premier would only admit to cosmetic changes. Dr Gerry Bates, Independent Member of the House of Assembly and former University of Tasmania lecturer in Law, claimed that major changes had unquestionably been made (Tasmania, House of Assembly 1989: 5629). These included exemption for the Companies from responsibility for future adverse effects to users of the marine environment, or any cumulative or synergistic effects caused by the addition of its effluent to that from other sources. In reference to the effects of effluent on the marine environment, Dr Bates argued that the original guidelines stipulating that 'no effect must be observable above existing background limits', had been interpreted to mean 'a rise in background limits is permitted until such time as material detriment has occurred or is likely to occur' (Tasmania, House of Assembly 1989: 5630). Dr Bates argued that because no background limits existed, this was a calculated omission to give the Companies every opportunity to escape future liability. These changes, although agreed to by Parliament, caused great concern and produced one of the biggest street marches and rallies seen in Hobart since those connected with the Franklin Dam.

When the State Government passed *The Northern Pulp Mill (Doubts Removal) Agreement 1989*, the final decision on the future of the project lay with the Federal Government. The Federal Minister for the Environment (Senator Graham Richardson) had indicated that the guidelines would need to be maintained unchanged if there was to be approval from the Foreign Investment Review Board. The Companies began lobbying Federal Ministers, whilst the anti-mill lobby, disillusioned with the inability of State-based processes to place any importance upon public concerns or attitudes, had been active in the federal sphere for some time (Economou 1992: 3). Christine Milne met with the Federal Minister for the Environment to present CROPS' case and later announced that if Cabinet would not give its support they would issue a legal challenge under the Federal *Environmental Protection (Sea Dumping) Act 1987*. Unexpectedly, the Federal Minister for Primary Industries announced that the Commonwealth would conduct its own scientific evaluation of the environmental effects of the mill because of his concern for risks to Australian export markets from dioxins or other chemical effluent.

Undertaken by the Commonwealth Departments of Primary Industry and the Environment, this evaluation to Federal Cabinet made it quite clear that there were two unresolved and major issues affecting the Wesley Vale dispute: whether emissions were in accordance with what could be expected from the most advanced technology, and the effect of the emissions on the environment (Chapman 1992: 45). These issues should have been addressed in the original EIS or its Addendum produced by the Companies' consultants. In the evaluation it was asserted that the EIS was 'grossly inadequate, factually incorrect or distorted' (Chapman 1992: 45). Little confidence was held in the proponents' ability to present the information necessary for impartial analysis of environmental standards after the mill had been erected. In addition, the evaluation criticised the lack of obligation on the Companies to remedy any increase in marine pollution above base-line levels, an obligation it believed should have been included in the *Northern Pulp Mill (Doubts Removal) Agreement 1989*. The evaluation also condemned this agreement, claiming it seriously compromised the Tasmanian Government's ability to establish and enforce pollution controls needed to protect the marine environment - concerns raised by the State Department of the Environment, but ignored by the State Government.

On 15 March 1989 the Federal Cabinet decided that the environmental guidelines, as interpreted in *The Northern Pulp Mill (Doubts Removal) Agreement 1989*, were insufficient, and that as a consequence it was unable to recommend that the Foreign Investment Review Board approve the project. It favoured the project for its economic benefits but believed that the environmental conditions set by Cabinet were in the national interest and should be met by the developers. The Companies responded that they could not afford continued expenditure without a guarantee that approval would be finally granted, and cancelled the project.

2.3.1.4 The Implications of Wesley Vale and the Franklin Dam for Major Project Development

Although the ramifications of Wesley Vale were more far-reaching than for the Franklin Dam, especially in terms of political, environmental and social considerations, the two disputes are comparable. The apparent disregard by the State Government for the environmental impacts of development, the refusal to acknowledge public concern and legitimate public involvement in the development approval process, and an absence of public accountability for its policy and development decisions were issues common to both. In the case of Wesley Vale, however, these issues were associated with the Government's compliance with the demands of private industry, the denial of legislated rights of appeal, the circumventing of democratic parliamentary

process, and attempts to remove transparency from many of its decisions. These actions not only reflected the Government's attempts to ignore basic principles of democracy, but also a calculated disregard for the long term environmental, economic and social effects of the proposed development, despite the potential for the development to affect the economic livelihood and quality of life of the local population.

The absence of a proper development approval process again played a central role in the dispute, leaving the State Government without any obligations to a predetermined and clearly defined formal decision-making framework. This lack permitted the Government to direct the process in accordance with its determination to circumvent interference. Without this formal process, and because the EIS process under the *Environment Protection Act 1973* was discretionary (see ch 3.2.3), the Government could disregard public perception and sentiment, and ignore recommendations about the mill from its own environmental agency and the scientific community. The absence of a formal process of environmental consultation also permitted the Government to manipulate the vague process by, for example, confining the members of the State's negotiating team to the Ministers for Forests, Health, Primary Industry and the Treasury, whilst excluding the Minister for the Environment (Milne 1990: 86). Similarly with the Franklin Dam, it is arguable that an efficient and effective formal process would have discouraged the Government from circumventing parliamentary process.

Formalisation would have avoided State Government entanglement in an *ad hoc* approval process created by its responses to the Companies' and Federal Government demands and public protest. According to Alan Jamieson (project manager for Noranda, cited in Davis 1990: 99) strong, clear and precise procedures were needed before it would be viable to establish any future resource projects in Australia. The events of Wesley Vale revealed that these procedures would need to instil community confidence not only in issues such as siting and waste disposal, but also in the benefits from the exploitation of the State's forest resources. In this instance the absence of a formal process for assessing development proposals excluded public accountability by the Government for its policy and development decisions. The Government was unable to account for its decisions because they were not arrived at through a predetermined process, but were made at the crisis points punctuated by the Companies' threats to withdraw. They were decisions required by the Companies, and it is difficult not to conclude that the Government was driven predominantly by what the Companies could offer in political terms. Given Tasmania's history of forest disputes, the provision of forest resources also had the potential to become as significant a problem as those of the mill's siting and environmental standards.

These two case studies show that the *Environment Protection Act 1973* did not provide the procedures necessary to deal effectively with major resource development projects in Tasmania. In the absence of formal procedures, executive branch attitudes and actions were determined by expediency rather than by obligation, and were based on a narrowly focused, inefficient, and ineffective development approval process. The fundamental weaknesses of this process were that it allowed the executive branch to exclude the opinions, perceptions and concerns of those external to the negotiating process, to adopt a negligent level of environmental impact assessment, and to operate amidst circumstances of secrecy and manipulation fostered by those with vested interests.

2.3.2 *Development Under Licence: Scheduled Premises*

The second tier of development to be examined is the tier subject to licensing under the provisions for scheduled premises in the *Environment Protection Act 1973* (Tasmania 1973: Part IV). The categories of development within this tier appear in Schedule 1 of the Act and include quarries, mines, sewage treatment plants, metal and electroplating works, and manufacturing or processing industries such as chemical works, oil refineries, woodchip mills, abattoirs and rendering plants. Although environmental damage caused by scheduled premises was most pronounced in the State's rivers and lakes, scheduled premises also contributed to moderate levels of localised atmospheric pollution. Much of this pollution was remedied by the late 1970s, but two industrial sites, the Pasminco Metals-EZ refinery on the outskirts of Hobart and Comalco's aluminium smelter in the State's north, continued to contaminate the atmosphere into the 1990s - 17 years after the introduction of the Act. In what follows I examine the environmental impacts of scheduled premises, and the circumstances which gave rise to those impacts.

2.3.2.1 *Pollution of Rivers and Lakes: Industrial Wastes and Sewage*

The *Environment Protection Act 1973* was introduced primarily to reduce pollution levels. In 1989, however, the Acting Director of Environmental Control reported that the amount of industrial waste from scheduled premises was 'far from satisfactory' and had resulted in 'stretches of the State's major rivers becoming unsuitable for recreational use', whilst some rivers were 'simply dead from their use as industrial effluent channels' (Department of the Environment 1990a: 10).

Earlier, pollution levels in the Derwent River were studied in 1975 by Professor Bloom, head of Chemistry at the University of Tasmania. His research

showed that the outflow of industrial effluent, untreated sewage and abattoir waste had severely affected the river system. Results indicated that river sediments adjacent to the Pasminco Metals-EZ electrolytic zinc refining plant in Hobart were as high in heavy metals concentrations as sections of the notorious Minamata Bay (Bloom 1975: 19-21). Furthermore, his search for shellfish for analysis for heavy metal contamination revealed an absence of any signs of aquatic life along an approximately 5km length of the foreshore between Macquarie and Dowsing Points opposite the zinc works. He concluded that this pollution was a consequence of the effluents, and also of the leaching and wind effects on the stockpile concentrates and residues on land.

Then in 1987-88 a study of bacteria, heavy metals and ambient nutrient levels in the Derwent River was undertaken by the State Government (Department of the Environment 1988a). Until 1990, local government sewage treatment facilities operated, almost without exception, under Ministerial exemption. When introduced in 1973, exemptions were to allow industries with a professed inability to meet the effluent and emission standards and regulations of the Act to lawfully operate in excess of requirements for a maximum of four years. After this time they were expected to meet the requirements of the Act. These intentions, however, never materialised, and industry continued to discharge wastes relatively uncontrolled.

In 1990, fourteen sewage treatment facilities were operating in breach of the *Environment Protection Act 1973*, some without Ministerial exemptions, and were discharging sewage into the Derwent with little more treatment than maceration. None of the major plants had disinfecting facilities, and their discharges were a 'likely source of viral infections associated with water contact activities' (Scott and Furphy 1990: 14). Bacterial levels were monitored at 12 important recreational sites along the river. Using the *United States Environment Protection Act 1976* water criterion for acceptable primary contact of a maximum 200 organisms (as faecal coliform bacilli per 100mL in less than 10 percent of samples), and the *State of Victoria Environment Protection Act 1983* water criterion for acceptable secondary contact of a maximum 1000 organisms (as faecal coliform bacilli per 100mL in less than 10 percent of samples), five sites were found to be unsuitable for primary contact, whilst all were found acceptable for secondary contact. Fourteen sites were also chosen to provide information on other foreshore areas along the river. Five did not meet primary contact standards, whilst three did not meet secondary contact standards.

Notwithstanding the excessive levels of pollution in the Derwent, it is important to compare Tasmania's standards with others both nationally and

internationally. Although the Tasmanian Government continues to use the *United States Environment Protection Act 1976* faecal coliform bacilli criterion for primary contact waters to the present time, this criterion was abandoned by the United States Environmental Protection Agency in 1986, and later by other countries including New Zealand. It was replaced by the *E. Coli* criterion in order to give greater certainty in estimating disease risk from primary contact waters. Furthermore, the Australian National Health and Medical Research Council's (NHMRC) 1990 criterion for acceptable primary contact was 150 organisms (as faecal coliform bacilli/100mL), 25 percent lower than that accepted by the State authorities.

These circumstances reveal that consecutive State Governments have not retained a level of parity with pollution standards and regulations used both nationally and internationally. This issue will be shown to arise frequently, suggesting that State Government has been willing to accept standards and regulations that place greater assimilative stresses on the environment than others were and are willing to tolerate, and that also increase health risks to sections of the community, for example, those using the river for recreation.

The 1987-88 assessment results for heavy metals showed that levels of copper, cadmium, lead and arsenic were well within the Department of Environment's 1986 'maximum desirable levels', as stipulated in the *Environment Protection (Water Pollution) Regulations 1974*³ (Tasmania 1974), for both primary contact and AQU-B levels (levels suitable for growing foodstuffs), whilst approximately 50 percent of the 26 sites were in excess of the 200 µg/litre AQU-B criterion for zinc. These results identified zinc as the solitary offending metal. The leniency of the AQU-B criteria can be queried, however, especially as they remain current. The Department's 'maximum desirable levels' for copper, cadmium, lead and arsenic exceed the 1992 Australian and New Zealand Environmental and Conservation Council guidelines, used widely throughout Australia, for the production of foodstuffs and for the protection of aquatic ecosystems by magnitudes of between 0.4 and 2.0. Using these guidelines, approximately 96 percent of the sites exceeded zinc levels, 12 percent exceeded copper levels, 8 percent exceeded cadmium levels, and 80 percent exceeded lead levels. The data also indicated that mercury levels were not problematical, however, a Report in 1990 by the HECEC/TASUNI (see below) did not support this finding.

Ambient criteria for aquatic nutrient levels necessary to protect beneficial uses have been developed by the Australian Environmental Council (Report No. 19) and

³The water pollution regulations attached to the *Environment Protection Act 1973*.

suggest an upper limit of 0.05mg/litre for total phosphate. The Department of Environment's assessment of nutrient levels in 1987 found that all sampling sites recorded levels below this limit, yet in 1988 it was found that all sites equalled or exceeded the limit: an excess recorded even at sites near the mouth of the river which it was claimed might be expected to be least affected by human nutrient inputs. How are we to account for this anomaly?

A study of the upper Derwent River was undertaken by Davies in 1989. It indicated that the saline water quality within the saline/fresh water wedge was so severely degraded that 15km of the river between Bridgewater and New Norfolk was incapable of supporting normal estuarine aquatic life below a depth of two metres for at least 8 months of the year. Davies concluded that this state was due to the combination of very low oxygen and highly toxic hydrogen sulphide levels. He argued that conditions in the river had significantly deteriorated since 1977-78 due to the continuing input of high oxygen demand effluent from Australian Newsprint Mills at Boyer, combined with the ongoing decomposition of the wood fibre discharged from the mill over the previous 45 years.

The absence of any meaningful environmental control on industry provided by the *Environment Protection Act 1973* is vividly illustrated in these circumstances. Department of Environment and Planning requirements, even under the leniency of Ministerial exemption, limited discharges of wood fibre from the mill to approximately 35 tonnes per day. Davies estimated that not only did this limit of 35 tonnes exceed the upper river's capacity to maintain good water quality, but that Australian Newsprint Mills had been exceeding this limit by approximately 15 tonnes per day. Furthermore, he concluded that, even though the new primary effluent treatment plant built by Australian Newsprint Mills in 1988 had reduced the release of wood fibre from approximately 100-120 to 50 tonnes per day, this measure had had little impact on the total oxygen demand of the effluent which resulted primarily from organic material of non-wood fibre origin. Although he accepted that the climatically dry period since 1977-78 may have accentuated the deterioration of water quality in the upper Derwent, he concluded that it was unlikely that such a major impact on the estuarine water quality would have occurred without the presence of such excessively high biological oxygen demand (BOD) discharges into the upper river.

He anticipated that unless the total oxygen demand of Australian Newsprint Mills' discharges was reduced by at least 80 percent, they would continue to have a severe impact on the environmental quality of the river, resulting in accelerated

degradation of the river, extensive fish kills, and the existing odour problems in the upper river extending downstream. John Parsons, Environmental Superintendent at Australian Newsprint Mills in 1995, accepted Davies' conclusions without hesitation (pers. comm. June 1995). He conceded that the effluent discharge levels from the mill had not only exceeded the limits allowed under Ministerial exemption, but that those limits had been detrimental to the river's health. He expected that the situation would be rectified in 1998 with the commissioning of a new effluent processing facility which was estimated to reduce the daily oxygen demand of its effluent to seven tonnes.

Only months after Davies' 1989 Report the Derwent suffered severe problems due to the formation of sludge deposits in its upper reaches from discharged wood fibre from Australian Newsprint Mills at Boyer. A study of the problem was undertaken and in the Sludge Overview Report (HECEC/TASUNI 1990) it was estimated that approximately four million cubic metres of wood fibre sludge had been deposited along approximately 30km (author's approximation using a scaled map) of the upper river between the Australian Newsprint Mills' outfall and the Bowen Bridge. The sludge was found to be actively decomposing and giving off high levels of hydrogen sulphide, whilst some deposits contained high levels of heavy metals. The decomposing sludge was causing problems because trapped gases from the decomposing wood fibre were creating floating rafts of sludge which then fouled the riverbanks. The Report claimed that a period of high river flow in 1990 flushed approximately three million cubic metres of sludge from the river, but it was asserted that the remaining material continued to place a heavy oxygen demand on the river. The Report concluded that the oxygen content of the water was severely depleted by the decomposing sludge and other oxygen demanding materials which, in combination with the salt-freshwater wedge, had created an environment hostile to aquatic life.

The authors of the Sludge Overview Report also commented on the build-up of contaminants in fish. They noted concern at the mercury levels in most fish species in the river, and confirmed the presence of organochlorides in fish tissue. Although their Report found that the major source of these materials was unclear, it suggested that the distribution of mercury residues within the sludge indicated that material released in the past from the zinc works continued to be a problem.

Data on the Tamar River in northern Tasmania are limited, but a biological assessment arrived at similar conclusions concerning the environmental impact of industries operating under Ministerial exemption (Department of the Environment 1988b). The Report found that water quality in sections of the upper river was clearly

degraded by industrial effluent or sewage or both. Approximately 25km (author's approximation using scaled map) of the river was unsuitable for primary contact due to faecal coliform organism counts ranging from 322 to 38000 per 100mL, whilst approximately 20km (author's approximation) was unsuitable for secondary contact due to faecal coliform organism counts ranging between 2160 and 38000 per 100mL. According to the Report both the upper and middle reaches of the river greatly exceeded the AQU-B criterion. The Report concluded that 'most, if not all of these problems would be overcome by those industries and sewage treatment plants which currently operate under Ministerial exemptions ... coming into compliance with the standards set down in the *Environment Protection Act 1973*' (Department of the Environment 1988b: 27).

In addition to those premises operating under exemptions, Davies argued that many pollution problems were associated with activities in small to medium sized scheduled premises (pers. comm. Jan. 1995). He claimed that the operators of these premises were not maliciously degrading the environment, but were uninformed about the environmental impact of their activities, and were unaware of their environmental responsibilities. The activities of these small scheduled premises were highlighted in a study jointly undertaken by the Department of Environment and Planning and the Glenorchy City Council (1990).

The study involved an environmental audit of the attitudes and activities of residents and industry in one of the six catchments within Glenorchy City. The municipality is adjacent to Hobart City, supports high density urban development and light to medium industry, and the Derwent River frames its eastern boundary. The catchment feeds into Prince of Wales Bay, a highly polluted part of the Derwent. There were four scheduled premises in the catchment, three of which operated under Ministerial exemption. The auditors discovered that the operators of the scheduled premises had little knowledge of the conditions attached to their licences, were without contingency plans for dealing with accidental spills, and that monitoring programmes were undertaken so infrequently as to be in contravention of licensing conditions for scheduled premises. In this context only one of the surveyed premises undertook the required monthly monitoring programme.

These circumstances resulted in 50 percent of premises using the stormwater system for discharging substantial volumes of effluent consisting of blood, oil, and brine. Although some discharges occurred under Ministerial exemption, much was unauthorised and in breach of the *Environment Protection Act 1973* standards and

regulations. Substantial volumes of effluent were also found to be unlawfully discharged via the sewer system to the Glenorchy Sewage Treatment Plant, itself operating under Ministerial exemption for the discharge of inadequately treated sewage to the Derwent river.

The environmental effects on the State's rivers of manufacturing and processing wastes from scheduled premises were thus substantial. The causes emerge as a pot-pourri of factors primarily involving Ministerial exemption for industry from the standards and regulations of the *Environment Protection Act 1973*, but including industry's lack of familiarity with the Act, and the absence of supervision, monitoring and enforcement of industry's compliance with the Act. Above all, the circumstances indicated a lack of concern or ability or both by industry, the political process, and bureaucracy to pursue the objectives of the Act. The experiences surrounding the environmental effects of extractive industries licensed as scheduled premises were similar, and these are examined next.

2.3.2.2 The Environmental Legacy of Mining

Political formulas for bolstering the State's economic growth have always featured the exploitation of Tasmania's mineral wealth. This attitude was a major component of the hydro-electric generation policy pursued by consecutive State Governments until the late 1980s. The realisation of this policy involved encouraging mining operations to the State with offers of plentiful supplies of electricity at inexpensive rates, combined with generous pollution concessions. The demise of the hydro-electric generation policy did not, however, signal the end of the pollution concessions which were still in operation until the mid 1990s.

The majority of these operations, classified as scheduled premises under the *Environment Protection Act 1973*, had significant to catastrophic impacts on Tasmania's aquatic environment. These impacts proceeded from a combination of Ministerial exemptions, the high sulphate content of rock in many parts of Tasmania (resulting in chronic acid-mine drainage problems from tailings dumps and mining sites of both active and abandoned mining operations), and discharge standards which were inappropriate to the receiving environment. Mining operations were also, and remain, implicated in the significant destruction of vegetation from emissions, the development of mining sites, and exploration and service roads cut into previously undeveloped forest areas. Few studies of these impacts are available, but recent research in the Pieman River catchment reveals a range of key environmental issues.

The Pieman River Environmental Monitoring Programme was undertaken between October 1990 and February 1992 in a co-operative effort involving State Government agencies and private mining companies to assess the water quality and status of aquatic organisms in the rivers and lakes of the Pieman catchment in northern Tasmania. Four large mines operated in the area with lead, zinc, silver and tin extracted from them. Each discharged effluent into the catchment's tributaries and lakes. The catchment includes four lakes: Pieman, Rosebery, Murchison, and Mackintosh, created by damming the Pieman, Murchison and Mackintosh rivers for hydro-electric generation. Numerous tributaries carried high levels of effluent into the lakes which, because of the dams, were maintained for longer periods in the lake environment rather than being diluted and dispersed rapidly through the river system. In addition to hydro-electric generation and mining, the catchment supported tourism based on the Lower Pieman River which is classified by the State Government as a State Reserve and Conservation Area.

The author noted that tributaries directly receiving discharges and run-off from past and present mining operations were found to have elevated metal, sulphate, and sediment concentrations (Koehnken 1992: 31). Six tributaries, Bakers Creek, Chester Rivulet, and the Lower Argent, Huskisson, Que, Ring and Savage Rivers were most affected. Chemical concentrations of these tributaries were several orders of magnitude higher than in those tributaries not receiving mining effluent, with readings of up to tens of milligrams per litre for iron, manganese, zinc, copper, cadmium and lead. The results (Koehnken 1992: Table 6.2) revealed that zinc, lead, copper, cadmium, iron and sulphates in the water column of the majority of these affected tributaries were at levels far in excess of those allowable for undiluted mining effluent under the *Environment Protection (Water Pollution) Regulations 1974*.

Limited sampling of invertebrate and fish communities downstream of the mining operations also revealed that most were in extremely poor condition, with many expected communities non-existent. The author cited invertebrate studies conducted by the Inland Fisheries Commission in rivers in the Pieman catchment over several years, studies which noted the adverse impacts of mining effluent on aquatic communities. One study by Chilcott, Maxwell and Davies (1991) indicated that the Hellyer mine, in operation only since 1980, had contributed to an extreme reduction in abundance and diversity of aquatic populations in the Que and Southwell Rivers. The effect of this pollution in the Que River was found to extend to its junction with the Huskisson River, approximately 15km from the mine. The Huskisson River's point of discharge into Lake Pieman is approximately 15km below its junction with the Que River, and no sampling of the Huskisson was undertaken. These results suggest, however, that the

effects of this pollution may extend along the Huskisson River to its point of discharge into Lake Pieman.

Koehnken (1992) estimated that approximately 25 percent of the water entering Lake Pieman carried mining effluent, but that the effluent did not seem to result in any significant effects on the lake. Changes in the water chemistry in Lake Pieman had taken place through the presence of iron, manganese and zinc and, although the effects of iron and manganese were not considered environmentally significant, zinc was present in elevated concentrations [0.47 µg/L (470 ppb)] considered deleterious to ecosystems. Toxicity studies conducted on the zinc tolerance of trout indicated that the level of dissolved organic carbon (DOC) may have reduced the impacts of this metal on the lake's ecosystem, but Koehnken (1992) recommended that these studies be expanded to quantify the effects.

Koehnken's Report noted that about 80 percent of the zinc entering Lake Pieman was attributable to mining, of which approximately 25 percent, or 145 tonnes per annum, remained in its waters. Ongoing discharges from ore processing, and seepage from the tailings dams of abandoned mines were the two continuing sources of damage to the catchment's marine life. The author suggested that a substantial decrease in zinc concentrations in the lake should be achieved if the discharge of zinc from the Hellyer mine into the Que River was reduced, and the acid mine drainage emanating from the abandoned Hercules mining site was minimised. Of import for the research team, one additional circumstance in relation to the future environmental integrity of the catchment was the three new mines in various stages of development. The Report concluded that the implications of these mining operations for water quality were of concern, but difficult to assess.

According to Koehnken (pers. comm. Aug. 1996), since the publication of the Report the majority of active mining operations has been brought into compliance with the *Environment Protection (Water Pollution) Regulations 1974*, and no longer operate under Ministerial exemption. She contended, however, that Tasmania's 1974 regulations for mining effluent required investigation due to their maximum allowable concentrations of heavy metals. These regulations allow cadmium, lead, mercury, zinc and copper, and substances such as arsenic and cyanide, in mining effluent at concentrations of up to two magnitudes greater than the ambient levels recommended by the 1992 Australian and New Zealand Environment and Conservation Council guidelines for the protection of ecosystems. Another management concern raised in the Report (Koehnken 1992: 103) was the absence of any water quality guidelines relevant

to the Pieman catchment. Because the catchment's waters are naturally dilute in terms of introduced salts, the major input being the salts carried on prevailing winds, and because these waters are extremely rich in organic compounds derived from the soils, mining discharges were readily detectable but their effects on the waters of the Pieman catchment were unknown.

Despite compliance by the majority of managers of ongoing mining operations with the required standards and regulations, the run-off and discharge from tailings dams and exposed workings from abandoned and operational mining sites will continue to pose a major environmental problem. This is because acid mine drainage is complex and expensive to eliminate. Although the majority of these operations either began or ceased (or both) before the introduction of the *Environment Protection Act 1973*, the Hellyer and Que River mines opened in 1980 and 1987 respectively. The Act empowered the State Government to demand that these mining operations conformed to the required standards and regulations under the Act, but did not occur. Mining operations were allowed to proceed under Ministerial exemptions because of the threats of closure if operators were faced with added costs.

The aquatic environment has fared badly under the *Environment Protection Act 1973*. The reason has been a combination of factors of which Ministerial exemptions clearly predominated, allowing levels of waste, and mining run-off and discharge far in excess of environmental capacities. The absence of monitoring and lack of enforcement of licence conditions were other important factors in these impacts. These lacunae are nowhere better exemplified than with local government administered sewage treatment facilities operating in breach of the Act's standards and regulations, without Ministerial exemption. Many of the environmental standards and regulations which the operators of scheduled premises have been required to meet have been lenient at best and totally inappropriate at worst. This apparent lack of concern for adequate environmental standards and regulations is reinforced in circumstances where water quality guidelines relevant to the management of the Pieman River catchment were entirely absent, especially in the face of on-going and serious pollution from Ministerially exempt mining operations.

2.3.2.3 Atmospheric Pollution and Industry

Compared with the problems arising from the discharge of wastes into rivers and lakes by scheduled premises, the problems caused by atmospheric pollution appear minimal. Localised problems reported to the then Department of the Environment were investigated and eliminated by the late 1970s. In particular, these problems were

tangible particulate and acidic depositions from furnaces and boilers. The remaining problems concerning heavy metals fallout; fluoride emissions were not as evident, however, and did not receive similar attention. Data showing a profile of atmospheric pollution in Tasmania are mostly unavailable. The majority of studies have been confined to the environs of Hobart and the industrial area of the Lower Tamar Valley in northern Tasmania (see Low 1983; Low 1988; Low & Bloom 1988).

The dust and heavy metals fallout data for the Hobart metropolitan area gathered by the Department of the Environment between 1973 and 1981 were analysed by Low (1983). He found that although the dustfall rates were low, that is, less than $100\text{mg m}^{-2}\text{ day}^{-1}$, the concentrations of heavy metals, particularly those of zinc, iron, lead, manganese and copper, in some suburbs were very high and decreased with distance from the Pasminco Metals-EZ electrolytic zinc refining plant. This plant is situated five kilometres from Hobart's central business district, and is adjacent to residential areas.

In 1991 the Department of Environment and Planning (a change of name initiated by a change in Government) reviewed its dust fallout results from 20 Hobart monitoring stations between 1973 and 1976, and the long-term trends at two sites between 1973 and 1990. The data gathered between 1973 and 1976 suggested that three sites were outside acceptable international standards for total dust levels, and that long term trends showed no significant change in fallout levels. The long-term heavy metal loading of the dust, however, found to reduce with distance from the Pasminco Metals-EZ refinery, had increased at one of the two long-term sites. Although the heavy metal content of the total dust at the remaining long-term site was unchanged, the relevance of this site was questioned because of its location on the margin of the main dust transport pathway.

The review concluded that, as no Australian or international standards specifying acceptable concentrations for heavy metals in total dust were available, caution should be exercised in determining the values as an acceptable risk to public health (Department of Environment and Planning 1991a: 30). The Report recommended that the Department require Pasminco Metals-EZ to undertake improved on-site management practices to reduce dust generation, that the Department establish new monitoring stations to correctly assess dust distribution, and that criteria for acceptable dust fallout levels in relation to heavy metals and toxic substances be developed and formally established. The Report's recommendations highlighted the poor implementation of the Act by consecutive governments in allowing on-going

atmospheric pollution by contaminants, without knowing their effects on human health at differing levels of contamination. However, considering Professor Bloom's recommendations 15 years earlier for strategic planning to address the wind effects on the stockpile concentrates and residues on land at the Pasminco refinery, the Report implies government complacency in relation to environmental health issues.

Low (1988) investigated the acidity of atmospheric deposition in the lower Tamar Valley in northern Tasmania. Within this area were located an aluminium smelter, a ferro-alloy smelter, and an oil-fired thermal power station. He found that of 194 samples of atmospheric depositions collected from seventeen locations, approximately 32 percent were acidic ($\text{pH} < 5.6$), and of these, approximately 13 percent had a pH of less than 5.0. He concluded that the acidity of the atmospheric deposition in the lower Tamar Valley was strongly influenced by the industrial activities in the area, and that under certain meteorological and emission conditions, the lower Tamar Valley could be greatly affected by acidic atmospheric deposition.

Further study by Low and Bloom (1988) of the atmospheric deposition of soluble fluoride at the 17 sample sites in the Tamar Valley found that mean deposition rates ranged from $90 \mu\text{g m}^{-2} \text{ day}^{-1}$ at 8.1km to $12568 \mu\text{g m}^{-2} \text{ day}^{-1}$ at 0.8km distance from Comalco's aluminium smelter. Although Low and Bloom observed that vegetation within 3km of the site was damaged by fluoride contamination, they could find no comparative deposition standards derived from similar sampling and analytical techniques. They claimed, however, that available literature with unknown sampling procedures reported light to severe fluoride damage at deposition rates between $41\text{-}940 \mu\text{g m}^{-2} \text{ day}^{-1}$ in Newfoundland, and the South Carolina Pollution Control Authority had adopted an ambient air standard of $100 \mu\text{g m}^{-2} \text{ day}^{-1}$ for gaseous fluoride.

Investigation of the effects of fluoride on sheep and cattle in the vicinity of Comalco (Department of Primary Industries and Fisheries 1984) took place between 1981 and 1983. Although the results indicated that some cattle in the areas of highest fluoride deposition suffered symptoms consistent with fluoride poisoning, and the intake of fluoride was more than double that of livestock outside the area affected by fluoride deposition from Comalco, the intake was said to be in the upper tolerable limits.

Low and Bloom (1988) argued that the emission standards for fluoride control adopted in Tasmania were substantially more lenient than both national and

international standards, and were inappropriate for the control of fluoride emissions. Figures supplied to Low and Bloom by Comalco revealed that Comalco's fluoride emission levels in 1984 were 8.29kg per tonne of aluminium produced. Although this figure was significantly lower than the 16kg per tonne maximum allowable limit stipulated by the Australian Capital Territory Department of Health in 1981, it was much higher than the United States Environmental Protection Agency (1976) maximum limit of 1kg per tonne. Most importantly, however, it was far in excess of the 1kg per tonne maximum limit adopted by the Australian Environmental Council, and the National Health and Medical Research Council, and enforced by the New South Wales and Victorian Governments prior to 1988. In the light of the standards applied both internationally and nationally, Low and Bloom's claim appears justified.

The emission standards adopted under the *Environment Protection Act 1973* for Comalco's operation were from the United States 1961 *Washington Fluoride Standards*, but because of Comalco's antiquated technology these standards were continuously exceeded, and the plant was granted Ministerial exemption. Comalco's economic benefit to the state, primarily as the largest single consumer of the State's hydro-electricity, meant that successive State governments used various inducements to encourage its continued presence. One such inducement was the annual renewal of Comalco's Ministerial exemption for fluoride emissions, an exemption that was still active in 1993.

These examples of atmospheric pollution demonstrate the environmentally detrimental impact of scheduled premises operating under the provisions of the *Environment Protection Act 1973*. They indicate that atmospheric pollution proceeded from Ministerial exemptions combined with lenient standards and regulations, and complacency in environmental health issues. The enforcement capability of the Act was demonstrated in that emissions resulting in tangible evidence of danger to health and property were immediately rectified. Emissions or atmospheric contamination not posing an immediate danger to health or property, although resulting in environmental degradation continued, however, despite the recognition that emission and atmospheric contamination levels were excessive.

2.3.2.4 Significance of Scheduled Premises

The operation of scheduled premises contributed significantly to the problems associated with development and environmental management under the *Environment Protection Act 1973*. Episodes of water quality and habitat degradation caused by untenable levels of contamination by bacteria, heavy metals, substances such as arsenic

and cyanide, and particulate matter were common occurrences in the State's rivers. Although data for atmospheric pollution are scarce, they suggest that emissions from scheduled premises were addressed when posing immediate danger to health or property. However, in circumstance where high pollution levels were sanctioned by government, or their effects on human health unknown, those levels continued.

Ministerial exemptions undoubtedly caused the major environmental problems associated with development and environmental management in relation to scheduled premises. The effects have been readily observable and widespread, and are a consequence of the number of exemptions in operation, combined with the lenient application of standards and regulations. The above circumstances also suggest a lack of concern and complacency on behalf of consecutive State governments and, in some instances, not only inappropriate standards for pollution control, but their total absence. These effects were compounded by a lack of understanding by the operators of scheduled premises both of their responsibilities under the *Environment Protection Act 1973*, and of the conditions attached to their licences. Many of these circumstances were attributable to inadequate levels of education, supervision, and enforcement by State Government authorities responsible for scheduled premises.

The basic effluent and emission standards and regulations under the *Environment Protection Act 1973* were also instrumental in environmental impacts from scheduled premises. The standards and regulations were rarely altered after 1974, and frequently fell short of the guidelines of Australia's National Health and Medical Research Council and the Australian and New Zealand Environment and Conservation Council. Their leniency not only increased stress on the environment's assimilative capacities, but increased potential human health risks. This leniency was manifest in criteria such as the acceptable level of faecal coliform organism contamination of primary contact waters, and the acceptable levels of toxicants in waters used for the growing of foodstuffs for human consumption. There was also a questionable discrepancy in the *Environment Protection (Water Pollution) Regulations 1974* (Tasmania 1974) standards for the discharge of mining effluent into inland waters when compared to the Australian and New Zealand Environment and Conservation Council (1992) guidelines for the maximum ambient levels of toxicants necessary for the preservation of ecosystems. The *Environment Protection Act 1973* standard for fluoride emissions was another standard that greatly exceeded both national and international guidelines.

2.3.3 *Development Under Local Government*

Development under project-specific legislation and scheduled premises primarily involved industrial development governed by the provisions of the *Environmental Protection Act 1973*. Development under local government, however, included both industrial development not classified as scheduled premises but subject, as was all industry, to the *Environment Protection Act 1973*, and non-industrial development. In this respect development under local government was subject to both the *Environment Protection Act 1973* and the *Local Government Act 1962*.

Although not producing the singularly sensational environmental consequences of some major industries, the bulk of development in Tasmania has occurred under local government permit. The resulting cumulative impacts in urban areas, and rural and natural areas close to the cities arguably represent the most important component of environmental mismanagement in Tasmania. In Davies' (pers. comm. Feb. 1995) and Bingham's (pers. comm. Nov. 1995) estimation, annually in Tasmania there have been 1-2 projects requiring specific legislation, 200-300 approvals for scheduled premises, and 3000-4000 local government permits.

A profile of the problems associated with development and environmental management under the jurisdiction of local government principally concerns impacts on the environment in which the community lives and works. The impacts were diverse, and differed across municipalities. The causes included the use of the stormwater system by industries not classified as scheduled premises for the inappropriate and unauthorised disposal of wastes, siltation from urban and rural run-off, and relatively uncontrolled subdivision. Grasping the problems in the sphere of local government is inherently difficult due to limited research data. As a consequence, the account here is largely based on extensive interviews with local and State Government officers.

2.3.3.1 *Use of the Stormwater System by Industry*

The problems faced by local government from the use of the stormwater system for the disposal of wastes was highlighted in the audit of the attitudes and activities of industry in the catchment feeding into Prince of Wales Bay undertaken by the Department of Environment and Planning and the Glenorchy City Council (1990). The audit revealed a lack of knowledge by urban residents and operators of non-scheduled premises both of the prohibition on discharging pollutants into the environment under the *Environment Protection Act 1973*, and of local government

controls. Few managers visited could produce any evidence of planning or development approval from local government, or were familiar with approval requirements and conditions. Awareness of the Federal *Dangerous Goods Act 1976* administered by the Commonwealth Department of Resources and Energy was minimal and limited only to those premises licensed by that Department, yet hazardous substances were used without licence by most industries visited. Very few licensees or operators of non-scheduled premises could outline contingency plans for dealing with major accidental spills. The Report noted a basic lack of recognition by the wider community and by small industry for the substantial contribution of accumulated small inputs to wider pollution problems.

In the Glenorchy audit it was stated that thirty percent of twenty non-scheduled premises in the catchment contaminated the stormwater system with cleaning residues, solids and liquids. These contaminants included paint, dust, thinners, machinery washings and fish solids. In addition it was found that accidental spills of liquids, which further increased the contamination of the stormwater system, occurred at thirty percent of all non-scheduled premises. According to the Glenorchy City Council Environmental Health Manager (French pers. comm. April 1995), the contamination was long-standing, ongoing and much of it breached the *Environment Protection Act 1973*.

Supporting evidence for the contamination of stormwater was presented by Graddon, Hanslow and Matsushita (1995). Their study occurred after the *Environment Protection Act 1973* and *Local Government Act 1962* were no longer in force. The results revealed stormwater contamination problems which, according to French (pers. comm. April 1995) and indicated by the Glenorchy City Council Environmental Health officer survey of 852 businesses (Baker 1991), existed prior to the introduction of the new System. Graddon, Hanslow and Matsushita undertook a study of the quality of stormwater entering Prince of Wales Bay at four stormwater outfalls. Since both scheduled and non-scheduled premises, as defined under the previous legislation, used the stormwater system for discharging effluent these results cannot be solely attributed to either classifications of industry. They do indicate, however, the impact of the stormwater system on the environment, and the problems posed for local government. The authors found total suspended solids in the range of 6-93 mg/L, with surface oil evident at three of the four outfalls, one outfall showing a disconcertingly high proportion of polycyclic aromatic hydrocarbons (PAH) - a hydrocarbon that is carcinogenic or mutagenic or both.

Although pH measurements in general were found to be neutral or slightly alkaline, one measurement of 9.9 was recorded at an outfall connecting with a textile manufacturer who under the previous legislation had operated under Ministerial exemption for discharging effluent that averaged a pH of 11.0. Faecal coliform organism counts ranged from less than 100/100mL to 5,200/100mL. The *State Environment Protection (Water Pollution) Regulations 1974* standard for acceptable faecal coliform organism emissions into bays or estuarine waters was 1000/100mL. According to Graham (pers. comm. June 1995), one of the reasons this illegal use of the storm water system as a means of waste disposal is difficult to remedy is because the number and location of stormwater outfalls feeding into, for example, the Derwent River, is unknown. The audit also reported that industry used the Municipal tip for disposing of wastes such as spent thinners and oil products which were creating contamination problems. Graddon, Hanslow and Matsushita (1995) suggested that there were indications that seepage from the tip may also have contributed to the contamination of the stormwater system.

2.3.3.2 Siltation from Urban and Rural Run-off

A problem associated with, but not confined to the stormwater system, is siltation. In the Glenorchy City Municipality, sedimentation from the deposition of silt by run-off and through the stormwater system is rapidly creating mud flats in Prince of Wales Bay in the Derwent River (French and Baker pers. comms April 1995). A major problem facing the Council is the continuing public complaint about the offensive odours produced by these mud flats. The sedimentation is of such proportion that dredging and land filling are believed to be inadequate long term solutions. French argued that siltation was a serious problem in the stormwater system, and in the creeks and water courses throughout the Municipality. He estimated that the Glenorchy City Council employed six full time workers to clean silt from creeks and side-entry pits. French and Baker believed the major sources of pollution were from agricultural run-off, subdivision development, and soil erosion from unprotected slopes following occurrences such as hazard reduction burns - the reduction of combustible vegetation by the State Fire Service, through controlled burning prior to summer.

The nature of siltation problems in the Derwent River was revealed by Lewis and Duvivier (1988) in a study of Lindisfarne and Geilston Bays undertaken for the Clarence City Council to enable assessment of the rehabilitation options for the bays. They discovered that 300mm of sediment had been deposited in Lindisfarne Bay since 1979, and that there was an ongoing deposition rate of between 17mm-34mm per annum. The deposition was reported to be a consequence of human intervention in the

catchment, and unless this impact was reduced, or dredging undertaken, it was estimated the deposition would create inter-tidal mud flats in the bay within 50-100 years. Dredging has remained an unacceptable option, however, because the sediments below 300mm, those deposited before 1979, must be treated as toxic waste due to their high levels of zinc and cadmium contamination. No facilities are presently available for disposing of such waste. According to Lewis and Duvivier, Geilston Bay was undergoing similar rates of deposition, and dredging was again an unacceptable option because the levels of zinc and cadmium contamination in the silt deposits below 300mm were substantially higher than those in Lindisfarne Bay.

2.3.3.3 Uncontrolled Subdivision

The subdivision of land in Tasmania under the *Local Government Act 1962* was relatively uncontrolled, and resulted in two overlapping problems for local government: the consequences of associated environmental degradation, and escalating infrastructure costs. The uncontrolled manner of subdivision resulted from the belief by councils and land-owners that the latter had an unquestionable right to subdivide. Councils encouraged subdivision because it provided increased rates revenue. These attitudes were reflected in a recent study by Hogue (1995) for the Department of Environment and Land Management. She conservatively estimated that at the present rate of development there was 35 years supply of land zoned for high density residential development and 25 years supply of land zoned for rural-residential development in the greater Hobart area.

The rate of subdivision between 1989 and 1993 is also indicative of the problems which now confront local government. During this period the largest areas of land conversion occurred for low density lots. Although 50 percent of the lots created were less than 1000m², they occupied only 2.6 percent of the area of land subdivided, whereas the 28 percent of lots greater than 4 000m² occupied almost ninety three percent of the land subdivided. McMullen and Baker (pers. comm. April 1995) and Port (pers. comm. June 1995) argued that this occurred because subdivision under the *Local Government Act 1962* was almost a right, was largely devoid of planning objectives, and dependent only on the limiting factors of septic tank approval and conformity to the minimum standards for lot size and boundary setbacks.

The problems associated with subdivision have included the loss of community environmental amenity, difficulties for local government in maintaining drainage and erosion control, and increasing pollution from inappropriately sited septic tanks. Escalating infrastructure costs were associated with the wide dispersion of

subdivisions placing a heavy burden on councils for infrastructure such as sewage, drainage, water and transport. Dispersed development financially restricted local government in the infrastructure it could provide, resulting in, among other consequences, unsatisfactory environmental management strategies and outcomes.

Doole and McMullen (pers. comms May 1995) contended that the environmental problems associated with subdivision were not only excessive, but also unnecessary, as they stemmed primarily from the tendency of developers to remove too much vegetation. This practice created environmental wastelands devoid of habitat for native fauna, and damaged aesthetic values through the general absence of vegetation and the loss of skyline. These consequences were compounded by inadequate drainage and erosion controls. According to Doole, developers ignored drainage and erosion controls, and many planners did not understand them. The responsibility for problems had placed crippling costs on local government due to the necessity for frequent and continuing maintenance. Doole cited the occurrence of a recently completed subdivision, where the first heavy rains carried large amounts of mud down a hill slope, washing out the culvert and the road. These problems would not have arisen if proper environmental controls for drainage and erosion were initial requirements. Drainage and erosion control was seen by the majority of local government councils as an engineering problem, but they were unable to implement the necessary engineering solutions because of their lack of resources. McMullen and Doole contended that the reliance on engineering solutions reflected the lack of awareness by many developers and planners of the principles of environmental management.

Approval for subdivision was based almost exclusively on the acceptability of lot sizes, boundary setback standards, and especially the suitability of lots for septic tank systems. These criteria testify to the limited performance of local government in environmental management. According to Baker (pers. comm. April 1995) the record was further diminished because insufficiently stringent conditions were applied to the siting of septic tank systems. These lax conditions flowed from inadequate legislation which had allowed inappropriate siting in poorly absorbent soils or close to the winter underground water table. The resulting problems included the contamination of creeks and streams used for domestic and agricultural purposes, the appearance of raw sewage above ground and, according to Johnson (pers. comm. Feb. 1996), the suspected contamination of ground water. In many instances, engineers in local governments such as the Glenorchy City Council were forced to extend sewage facilities to overcome these problems. In other instances, physical and financial constraints precluded the installation of systems and problems remain.

The infrastructure costs to local government as a consequence of uncontrolled subdivision continue to be immense. Hogue (1995) argued that the manner in which subdivision proceeded in greater Hobart has spread the metropolitan area and prohibited efficient servicing. It has meant inadequate drainage, stormwater and sewage facilities because of scattered development, and has directly affected local governments' effectiveness in environmental management. Doole (pers. comm. May 1995) conceded that this problem was very significant in the Kingborough Municipality where former rural properties were subdivided into rural-residential lots of between two and four hectares. He argued that associated financial burdens prevented the Council from providing an acceptable level of community services, especially sewage and health care. James (pers. comm. Mar. 1996) conceded that dispersed development had presented staff and elected officials at Clarence City with serious stormwater and sewerage infrastructure problems which they were also powerless to resolve because of financial constraints.

One of the avenues used for avoiding the costs of providing community services has been to zone land as 'unserviced residential' where local government's only obligation was road maintenance. This practice has been prevalent particularly in the Sorell Municipality, where Hogue (1995) estimated that eighty seven percent of the land that is zoned residential is unserviced. Only twenty percent of this zone had been developed. Graham (pers. comm. June 1995) scathingly condemned this practice, and argued that this problem was intensified by the iniquitous provisions within the *Local Government Act 1962* which forced councils to meet the infrastructure costs of subdivision of land zoned other than unserviced, whilst developers continued to reap handsome profits.

2.3.3.4 Summary

Until the new System was in place local government's responsibilities under the *Environment Protection Act 1973* and *Local Government Act 1962* were concerned with non-scheduled premises and non-industrial development. Development created diverse environmental problems. The activities of non-scheduled premises polluted the marine and land environment with their discharges of effluent through stormwater and sewage systems, and through the disposal of waste as landfill. These developments proceeded with limited formal assessment, supervision or control. The result was proliferation of unacceptable practices such as the unlicensed use of hazardous chemicals, the absence of containment measures for potentially environmentally damaging industrial accidents, and the unauthorised and unacceptable discharge of

industrial wastes. Underpinning these practices was an overwhelming lack of understanding of the cumulative affects of pollutants on the environment, and a lack of knowledge and compliance with the relevant Acts.

Non-industrial development had a similarly significant impact on the environment, primarily because the *Local Government Act 1962* allowed subdivision to occur at an unwarranted rate, in an unplanned manner, and with the excessive removal of vegetation. The financial burden on local government due to the uncontrolled rate of subdivision associated with inadequate planning was enormous, and resulted in the reduction in community services such as transport, water, sewage, and health. Neither environmental provisions nor engineering solutions for combating the consequences of vegetation removal were employed, resulting in severe erosion and siltation problems, and the need for increased maintenance and repair to stormwater, creek and drainage systems. The excessive clearing was also responsible for destroying aesthetic values and amenity.

2.4 Forestry and Rural Industries: Development Excluded from the *Environment Protection Act 1973* and *Local Government Act 1962*:

Rural industries, that is, the use of rural land for pastoral and agricultural activities, and logging and its associated activities such as road building were not subject to the *Environment Protection Act 1973* or *Local Government Act 1962*. Thus, enormous areas of the State were outside the main environmental management and planning mechanisms.

2.4.1 Forestry

Environmental management of forests in Tasmania is a highly complex issue involving both federal and State governments, and the overview of the problems and conflicts presented here can only be in the most general of terms. The account is based largely on the 1993 Commissioner of Forests Report to the State Minister for Forests, and covers the period from 1973 to 1993 during which the environment protection and local government Acts in question were in operation. In 1994, the State Government altered the structure of State forests administration, replacing the Forestry Commission with the Forestry Corporation under a Board of Management. With the exception of a brief comment regarding this change, the overview of forestry concludes chronologically with the Commissioner's 1993 Report.

According to the Forestry Commission of Tasmania (1994: 7), 68 percent of Tasmania's forests were managed by the Commission for multiple use (wood production, recreation, conservation and other values) or by the Department of Environment and Land Management for conservation and recreation. Of this 68 percent, approximately 36 percent was dedicated as multiple use forests, 12.5 percent was inaccessible because of management for non-wood values or because of restrictions by the *Forest Practices Code 1993* (a component of the *Forest Practices Act 1985*), 19 percent was protected in formal conservation reserves such as national parks and forest reserves, and 5 percent (176 areas totalling 215 000ha) was in Recommended Areas for Protection. According to the Commission, these areas complemented the existing system by reserving regional examples of all forest types being logged. It is misleading for the Commission to include these areas as protected, however, for such status has awaited formal political ratification for the past ten years. Of Tasmania's forests 30 percent was privately owned and managed at the discretion of the land owner, except if commercially logged, when they became subject to regulation by the *Forest Practices Act 1985*.

The Forestry Commission (1994: 33) argued that non-wood or intrinsic forest values such as biodiversity, visual landscape, cultural heritage, and wilderness may be protected by classifying forests as conservation reserves. It claimed that the statutory reserve system, including the system of Recommended Areas for Protection and the network of non-reserve areas within Multiple Use Forest Land managed either by the Parks and Wildlife Service or by the Commission for conservation purposes ensured the conservation of both animal and plant species in Crown forests. These assertions were contradicted in varying degrees by the Commission's acknowledgment of its own areas of inefficiency, and by professional studies and opinions. For instance McQuillan (pers. comm. Nov. 1995) disputed many of the Commission's claims. He asserted that the conservation system implemented by the Commission had been grossly inadequate. For example, there were no requirements for surveys of the flora and fauna in logging areas as was required in the United States and Canada. The Forestry Commission conceded that although the status of rare, vulnerable and endangered vertebrate animal and vascular plant species was closely monitored, the status of invertebrate animals and non-vascular plants was less well known (Forestry Commission 1994: 8). Kirkpatrick (1991) was more explicit. He claimed that 46 of 147 different forest communities identified in Tasmania were either poorly reserved or unreserved. McQuillan also maintained that the choice of Recommended Areas for Protection did not reflect areas of representative forest, but rather emphasised the discretion of the Commission. In addition, he argued that some of the Recommended Areas for Protection were only 200ha in area, too small to support any meaningful representative ecosystem.

The Forestry Commission claimed these non-wood values may also be conserved through prescriptions within the *Forest Practices Code 1993* that must be applied during logging. McQuillan argued that this Code was at best loosely applied on Crown Land, and had been ineffective in the environmental management of private forest land. He argued, for example, that forestry officers, as employees of the Commission, were unable to enforce the Code, and that there were no flora or fauna provisions applying to private forest land following logging. The Forestry Commission acknowledged that measures were needed for the protection of flora and fauna on private land if effective statewide conservation of biodiversity was to be achieved (Forestry Commission 1994: 33).

The Forestry Commission also acknowledged that the rights and responsibilities of private owners, especially in managing the visual landscape, that is, land which can be seen from commonly used viewpoints, needed better definition. Bates (1992: 149) and McQuillan (pers. comm. Nov. 1995) argued that although the *Forest Practices Code 1993* was supposed to provide reasonable protection for the environment, especially visual landscape and soil protection, it had failed on private land. Following commercial logging, the vegetation which may have been retained for conservation according to the Code may be legitimately cleared without restriction for pastoral or other purposes. Tregenza (pers. comm. Jan. 1995) proposed that this situation was urgently in need of resolution, as farm run-off carrying sediment, chemicals and nutrients resulting from land clearing was as detrimental to the environment as pollution from site specific industry and manufacturing.

One of the major deficiencies in assessing the conservation status of forests concerns the natural heritage value of old-growth forests. Old-growth forests are significant to the debate about forest use, but there is no generally agreed definition about what constitutes old-growth forest. The Forestry Commission admitted that much of the forest in its classification of 'mature forest' was old-growth forest, and that mature forest would continue to provide the bulk of the harvest of sawlog timber, yet it also admitted that there was insufficient information to calculate how much existed or even how much was reserved (Forestry Commission 1994: 39). Despite these deficiencies, old-growth forests such as some in the Tarkine region in North-West Tasmania, regarded as worthy of World Heritage status by conservation groups, continued to be logged despite ongoing protests.

These protests reached an unprecedented level in 1986 with the battle by conservationists to prevent logging in the Lemonthyme and Southern Forests, listed as National Estate areas in North-West and South-West Tasmania respectively. The dispute degenerated into a political clash between the Federal and State Governments, and a physical confrontation between loggers and conservationists. Conservationists were assaulted, many were arrested (Australian Conservation Foundation 1986: 1) and, according to the *Melbourne Age* (10 Mar. 1986), shots were fired in the vicinity of the conservationist's spokesperson, Bob Brown. After an agonising dispute the Federal and State Governments reached an agreement in November 1988 whereby 30 percent of the Lemonthyme and Southern Forest would be nominated for World Heritage listing in return for various concessions to the State Government. These included a fourth woodchip licence for the State, an increased woodchip quota, and the continued logging of National Estate forests subject to a new agreement between the Commonwealth Department of Primary Industry and the Tasmanian Government (Toyne 1994: 103).

In an attempt to avoid similar events and, according to Toyne, to placate John Kerrin, the Federal Minister for Primary Industries, the Federal Government established the Resource Assessment Commission (RAC). The Commission was to provide an Australia-wide process based on broad community consultation for objectively evaluating both economic and environmental issues involved in major resource development decisions. Economou (1993: 158-159) was highly cynical of the Federal Government's motives, however, believing the Commission to be an attempt by the Federal Government to curtail the ability of environmentalists to conduct reactive campaigns capable of vetoing major projects. He saw the Commission as a means for the State to brand opposition to its outcomes as 'sour grapes' by recalcitrant groups who participated in the process but who objected to its verdicts. In Tasmania the outcome from this lengthy and costly dispute has been the continued logging of National Estate forests, increased numbers of woodchip licences and quotas, further degradation of natural heritage values, and an undiminished potential for similar future conflict.

Wilderness values and their protection from forestry have been subject to dispute for decades in Tasmania. The Forestry Commission defined wilderness as a land value dependent on the degree to which it was altered by human activities, not a forest value, and was recommending a new study to determine the extent of existing wilderness. The Commission considered that the last major study of wilderness, as a land value, by Lesslie, Mackey and Schulmeister (1988) was out-dated due to the many kilometres of roads constructed since 1988 for logging, mining, and hydro-electric dam construction in previously inaccessible areas. The Commission (1994: 33) considered that these roads affected both the 'remoteness and primitiveness' of the land, and

reduced its wilderness value. Members of the Tasmanian Conservation Trust and the Tasmanian Greens argued that the roads had been developed for exactly that reason: to intentionally reduce the area of forest protected for its wilderness values.

2.4.1.1 Summary

Environmental management of Tasmania's forests was problematic, especially in relation to non-wood values. Professional studies and opinion, as well as the Forestry Commission's acknowledgment of its own failings suggested that assessment and conservation of biodiversity, heritage and wilderness values in forests were inadequate. The Commission did not, however, support the claim that independent enforcement of the *Forest Practices Act 1985* was needed to ensure compliance with the Act. Irrespective of the Act's effectiveness, however, the legislation did not cover the thirty percent of the State's forests that were privately owned.

Forestry has long been seen as a threat to biodiversity, heritage and wilderness values, and has also generated social conflict. The exclusion of forestry industries from the *Environment Protection Act 1973* and *Local Government Act 1962* in no way diminishes their importance in Tasmania's development and environmental management. On the contrary, forestry industries, as with rural industries, are fundamental environmental management concerns in Tasmania due to their dependence on a large proportion of the State's land area. Their management practices need to reflect this dependence, and for this reason there was a belief among many environmental management professionals that management of the State's forests would be brought under the umbrella of the new System (Davies pers. comm. Jan. 1995).

2.4.2 Rural Industries

Agricultural land management practices in Tasmania have traditionally been the domain of the land owner. This tradition has been fiercely guarded. Much of the rural land in Tasmania is privately owned and was subject to the *Local Government Act 1962*, but the Act's powers were limited mainly to building permits, with land use practices exempted. The assessment of environmental problems has always been constrained by the multi-faceted nature of degradation, the total land area, and the assessment resources available. Until Grice's (1995) comprehensive assessment of soil and land degradation for the two million hectares of private freehold land in Tasmania, all previous assessments had either been restricted in area or had depended on limited field examination. Irrespective of the nature of assessment, it appears that land degradation has been steadily increasing.

In one of a series of twelve articles, Ford and Anderson (1985) claimed that data were lacking on the extent of soil erosion and its long term effects on primary industry in Tasmania. A 1975 estimate suggested that approximately 100 000ha, or about four percent of agricultural and pastoral land in Tasmania required remedial measures at an estimated cost of \$1.4 million. Ford and Anderson believed that the situation had worsened in both area and intensity since that earlier time, and noted that the cost of remedial action had greatly increased.

In 1985, there was a flurry of State Government activity in relation to land management. Twelve government authorities were actively involved in preventing land degradation through soil conservation and land management objectives, an Inter-Departmental Standing Committee on Soil Conservation was developing policy relating to conservation practices in the State, and a Technical Committee on Soil Conservation was established. Richley and Pinkard (officers with the Department of Agriculture) were reported to believe, however, that no amount of Government involvement would achieve soil conservation objectives until property owners became fully aware of the problem (Ford and Anderson 1985). They believed that awareness of land degradation was in itself a problem for landowners because it was largely inherited with ownership of the property, often hard to judge because of its gradual occurrence, and became only marginally worse during a property owner's lifetime. Consequently, it was difficult to persuade land owners to spend money on remedies. According to Richley (pers. comm), these circumstances remain, but the present problem is the economic viability of rural industry. With declining incomes, remedial work at the farmer's expense is financially prohibitive, and most is only undertaken when limited Federal and State Government funding is available.

Ford and Anderson (1985) briefly outlined the overall state of land degradation in Tasmania. They reported that sheet and rill erosion on some of the State's richest soils in North-West and North-East Tasmania had reduced the depth of soil from 25-30cm to about 10cm, whilst tunnel erosion in South-East Tasmania was estimated to have reached literally hundreds of kilometres, with hundreds of paddocks having multiple tunnels up to 400m long. In addition, Ford and Anderson reported that the Department of Agriculture had estimated in 1978 that approximately 5 000ha of agricultural land in Tasmania were affected by salting. Land clearing, burning, cropping and irrigation had increased this area to approximately 8 000ha.

A study of the Central Plateau region, covering an area of 710 311ha or approximately 10.5 percent of the State, was undertaken by Pemberton (1986). He

assessed that the highland areas of central Tasmania have the most widespread and severe sheet erosion in Tasmania and attributed this to grazing and burning which had continued for approximately 150 years. Sheet erosion was prevalent above 1100m, where in many areas settler land use practices had reduced and prevented the re-establishment of vegetation cover, allowing the erosive forces of frost (frost heave), wind, and water to remove large quantities of topsoil. In the western part of the Plateau erosion had created soil pedestals which indicated soil losses of up to 30cm (Pemberton 1986: 43). This erosion was not solely attributable to farm management practices, but included the legacy from severe wild fires in 1960-61 that devastated approximately 31 000ha of forest, woodland, shrubland and organic soils. Pemberton described this land as having undergone extremely limited recovery of both soil or vegetation after more than twenty years, and questioned whether such severely degraded areas would ever recover. Some areas of the Central Plateau between 900-1100m were estimated to have lost greater than fifty percent of their vegetation, and the value and quality of much of the land had been seriously impaired by the loss of topsoil through sheet erosion (Pemberton 1986: 44). This loss of vegetation and topsoil was attributed solely to the effects of grazing and burning.

The removal of vegetation in some of these areas exposes the deep peats which can ignite and burn for months. The destruction of the peat results in reduced water retention, increased run-off, and more extensive and frequent flooding. In a later study, Pemberton (1989) estimated that approximately 100 000ha of peat had been affected by sheet erosion in the South-West Region Seven study area adjoining the Central Plateau region, removing approximately 300 million m³ of peat. Pemberton noted that rabbits were a significant land management factor in these areas because they thrived in sparsely vegetated landscapes and consumed any regrowth.

Forestry is also undertaken in the Central Plateau region with woodchip companies holding licences for forest resources over most of the Great Western Tiers, central, southern, south-eastern and south-western areas of the plateau. Pemberton (1989: 47) noted that clear-felling for pulpwood had recently occurred in many of these areas, resulting in rill erosion and landslip.

In 1989 Richley and Cooper prepared a long overdue study of land degradation and soil conservation in Tasmania for Landcare Tasmania. Richley (pers. comm. May 1995) stressed that the estimates of land degradation were based on knowledge and experience rather than on direct assessment, but were as accurate as available resources allowed. They claimed that the rich crop lands of North-West

Tasmania were being severely damaged by raindrop splash, sheet and rill erosion, and that over 100 tonnes of soil per hectare may be washed away in a single storm. They estimated that the area of grazing and cropping land in Tasmania affected by raindrop splash, sheet and rill erosion was well over 200 000ha. When untended, the rills become gullies, and Richley and Cooper (1989) estimated there were over 40 000ha of Tasmania's farmland suffering gully erosion.

A common cause of land degradation is the removal of vegetation which then progresses through raindrop splash, to sheet, rill and gully erosion. Other consequences are waterlogging, salting, and tunnel and wind erosion. Richley and Cooper (1989) estimated that over 11 000ha of waterlogging and salting had been caused by inappropriate land management since white settlement. Tunnel erosion was estimated to affect approximately 8 000ha, over 66 000ha of farmland was believed to have been degraded by wind erosion and, due to vegetation disturbance, a further 19 000ha of coastal sand dunes on Crown Land. Richley and Cooper argued that frost heave continued to degrade vast areas of the State's highlands left bare by fire and grazing. Furthermore, they estimated that over 140 000ha of Crown Land Estate, especially a substantial proportion of the Central Plateau and the South-West, had been degraded by burning peat, resulting in serious erosion, and in more intense and frequent flooding.

The most recent survey of land degradation in Tasmania was undertaken by Grice (1995). She assessed the visible forms of degradation such as gully and tunnel erosion, mass movement, tree decline and salting using measurements of degree of degradation and area of impact. She concluded that the percentage of the 2 000 000ha of private freehold land affected by moderate to severe (100-<1000 m/100ha) gully erosion was 11.4 percent or 228 000ha, the area affected by shallow to deep tunnels was 4.9 percent or 98 000ha, the area affected by mass movement was 29.8 percent or 596 000ha, the area affected by moderate to extreme tree decline (10 percent-80 percent of dead branches in canopy) was 40.7 percent or 814 000ha, and the area affected by moderate to severe salinity was 8.6 percent or 172 000ha. It is important to understand that these results are based on the use of land component areas affected by the particular form of land degradation and, as Grice notes, the land component area is in most cases greater than the area actually degraded.¹

Because of the difficulty in visually assessing sheet, rill and wind erosion, and soil structure decline, Grice used a hazard or potential risk rating based on land

¹ Areas throughout Tasmania with similar Characteristics in rainfall, geology, altitude, topography, soils, and vegetation.

characteristics associated with land use. She contended that the area of private freehold land in Tasmania at moderate to extreme risk from sheet and rill erosion was 10.95 percent or 219 000ha, that at moderate to severe risk from wind erosion was 15.4 percent or 308 000ha, and that at moderate to severe risk from soil structure decline was 15.3 percent or 306 000ha. This assessment refers to the areas at risk, and not necessarily to areas actually degraded. Grice concluded that the results indicated significant areas of farmland were affected by land degradation, and she argued that the results showed almost all private land suffered from or was subject, under the then current land use regimes, to risk from at least one form of land degradation.

Richley (pers. comm. May 1995) conceded that the main land degradation problems were the intensively cropped soils of the North-West, some of which were being damaged because of being used beyond their capabilities, and the intensive grazing of steep dry hillsides in the Midlands and Derwent Valley. According to Richley both areas were susceptible to continuing soil loss through erosion due to the steepness of the land. In the North-West some of the land being cropped was by world standards very steep (25-30 percent slopes or 22.5°-27°), and erosion was quite severe. In the Midlands, the hillsides in summer were bare soil, and the farmers were economically unable to rehabilitate them.

Richley believed that the bulk of rural land in Tasmania was not suffering serious degradation, and that the degradation was not increasing in overall area. He conceded, however, that the erosion problems in many of the areas were intensifying and becoming a real concern. These included tunnel and gully erosion in general, sheet erosion on the steep hillsides in low rainfall areas, and the intensively cropped areas on the North-West Coast. The extent of the land area suffering these problems was expected to increase, however, because many of the new areas cleared for cropping and pasture were marginal, and the risk of degradation far higher (Richley pers. comm. May 1995).

One land degradation problem which has received scant attention is weed invasion of denuded soils. Clark (pers. comm. Sept. 1997) argued that this was a massive problem in the Southern Midlands Council area where erosion was extreme. She contended that weed invasion was a complex problem involving both eradication and reinvasion, and was made more difficult with some weed varieties having developed a resistance to all existing herbicides.

Tasmania is the only State in Australia without legislation governing land practices. Although approximately \$238 000 of Federal Government funding was accepted by the State Labor-Green Accord Government in 1989 to establish a Task Force to develop land conservation legislation, after extensive preparation the options for the legislation were shelved. According to McQuillan and Tregenza (pers. comms Jan. 1995), this was a political act because although the Tasmanian Farmers and Graziers Association supported land conservation legislation, the Liberal Opposition promised the State's farmers who were opposed to the legislation that, if elected to Government in 1992, it would seek alternative means to address land degradation. The Liberal Opposition was elected to Government and informed the Task Force that the Government's policy would be to 'encourage land conservation by education and Federal tax incentives rather than the introduction of Land Conservation Legislation' (Williams 1992: np).

2.4.2.1 *Summary*

Since most assessments of land degradation in Tasmania have relied on educated estimates of isolated geographical areas or land area components, as in Grice's (1995) study, the extent, intensity, and increase in land degradation in Tasmania is difficult to quantify. It is probable, however, that land degradation has increased substantially in extent and intensity in the past 20 years. According to Richley (pers. comm. May 1995), the continued use of land beyond its capabilities, and the continued development of marginal land for additional cropping and pasture due to the need for farms to offset falling world market prices would extend the overall area of this degradation. Furthermore, the economic constraints prohibiting the rehabilitation of presently degrading land would increase these problems. Richley (pers. comm. May 1995) also believed that much of the affected land would continue to be degraded and lose its natural fertility.

Formal land management controls are required for the management of the State's rural land as rural industry appears to steadily increase its impact and place greater stress on the land resource. According to Bradsen (1988: 69), the increasing impact of rural industry on land resources is a common phenomenon in developed countries where productivity increases have gone hand in hand with broad scale intensive farming methods and technologies which are using the land beyond its sustainable capacity.

Voluntary land conservation in Tasmania has failed. Soil conservation legislation for Tasmania has been widely supported by officers from the Department of

Agriculture (Bradsen 1988: 34 & Richley pers. comm. May 1995) for the past 20 years. Others such as Sandford (1990: 38) have claimed that legislation covering land and soil resources not only for rural, but also for urban and Crown Land, is essential. Bradsen argued that the overwhelming body of informed Australian opinion regards soil conservation legislation as necessary if only to develop a uniform code of practice. He contended that without soil conservation legislation in Tasmania, the degradation problems will not be rectified.

2.5 Conclusions

This overview of the three spheres of development within the jurisdiction of the *Environment Protection Act 1973* and *Local Government Act 1962*, including major development, forestry and rural industry that were excluded from these Acts, reveals significant ongoing environmental management problems and conflicts in Tasmania from 1973 to 1993. Environmental degradation from scheduled and non-scheduled premises was escalating due to the enormous volumes of wastes discharged in excess of the legislated standards and regulations, both with and without Ministerial exemption. Ministerial exemptions and their accompanying standards and regulations have, however, dominated the impact of industry on the environment. Evidence suggests that consecutive State Governments were not only unconcerned about the environmental impacts, but that they were also complacent in attending to the associated health risks.

Other factors contributing to environmental damage included the poor level of knowledge and understanding by industry of its licence conditions and responsibilities under the Acts, the almost non-existent assessment, supervision and monitoring of industry by Government agencies, the highly deficient procedures for containing accidental spills of pollutants, and the general ignorance of the cumulative effects of discharging wastes into stormwater and sewage systems. Many of the basic effluent and emission standards were also potential contributors to the decline in environmental quality. They remained unamended after their introduction in 1974, and in many cases compared unfavourably with the standards set by the Australian and New Zealand Environmental Conservation Council, as well as those enforced both nationally and internationally.

The cumulative effects of uncontrolled urban development on environmental quality were also problematic and costly. Uncontrolled subdivision resulted in sprawling outer metropolitan areas, where the excessive and unnecessary removal of vegetation by developers led to erosion, sedimentation, increased infrastructure maintenance costs for local governments and a loss of aesthetic values. The sprawling

nature of urban development also placed increased costs on local governments attempting to meet the infrastructure needs for this dispersed urban development. The immediate consequence was the reduction in sewage, road maintenance and community health services. Local governments also resorted to zoning large areas of future urban development as 'unserviced', an abominable response with the potential both to create acute environmental management problems through lack of water, stormwater, drainage and sewage facilities, and extensive urban areas with depressed socio-economic characteristics.

The conflicts generated by major development proposals in Tasmania during the operation of the *Environment Protection Act 1973* and *Local Government Act 1962* were intense. Common denominators were an apparent disregard by governments for the impacts of development on the environment, the refusal to acknowledge public concerns or legitimate public involvement in the development process, and a lack of accountability by governments for their development policies. The conflicts resulted in political instability, the evasion of democratic political process, social division and, on many occasions, the termination of projects and the questioning of the viability of future investment in Tasmania.

Common to both the problems and conflicts associated with environmental management was the absence of a pre-determined and clearly defined formal decision-making process stipulating the procedures to be undertaken in arriving at development decisions. The absence of formal process denied individuals, groups and organisations legitimate avenues for participating in decisions, whether in terms of policy or project approval, and restricted their voices to protestation rather than conciliation. A central need was to eliminate the ability for governments to determine the development process at will, and for transparency in decisions. The process also needed to provide for assessment of the economic, environmental and social ramifications of proposed development, public disclosure, a balanced representation of interests in development-approval decision bodies and avenues for appeal against development decisions.

The problems inherent in forestry and rural industries were substantial, but in some respects unique to those industries because of their exclusion from the *Environment Protection Act 1973* and *Local Government Act 1962*. The problems within the forestry industry, specifically the management of non-wood values within State Forests, appear to have been aggravated by the ineffectiveness of self-monitoring and self-enforcement. Whilst self-monitoring and self-enforcement continued, these problems were expected to remain. The conflicts over logging National Estate forests

were intense and mostly relied on political resolutions. These did not remove the potential for future conflict as they failed to establish any processes for public participation in forest development policy.

Rural industry was suffering increasing erosion and weed infestation problems due mainly to the removal of vegetation in pastoral regions and the cultivation of soils beyond their capabilities in intensive cropping areas. These problems were difficult to quantify because of the limited resources given to their assessment, but diminishing profits from rural industry were predicted to intensify these problems in the future. Despite the many recommendations that soil conservation legislation was needed to curb environmental degradation in rural areas, this politically difficult decision was not taken.

These examples of the problems and conflicts associated with development during the era of the *Environment Protection Act 1973* and *Local Government Act 1962* clearly indicate that the legislation governing environment protection and land use planning was unable to facilitate either quality environmental outcomes or, frequently, socially acceptable development decisions. In retrospect, the professed 'tough new legislation' was little more than rhetoric, and the land use planning legislation, as recognised by the Government in 1972, was in need of major overhaul. The need for change to the procedures and processes governing development and environmental management was pressing. In the following chapter I examine the objectives, provisions and enforcement of the *Environment Protection Act 1973* and *Local Government Act 1962* to determine their strengths and weaknesses, which should respectively have been retained or eliminated from future environmental management and planning legislation.

Chapter Three

The Superseded Legislation

(The *Environment Protection Act 1973* and the *Local Government Act 1962*)

3.1 Failure of the 'Tough New Legislation'

In this chapter I examine the *Environment Protection Act 1973* and the *Local Government Act 1962*. It was during the operation of this legislation, which governed development and environmental management in Tasmania between 1973 and 1993, that the problems and conflicts discussed in the previous chapter arose. The examination reveals that, rather than defining objectives, the *Environment Protection Act 1973* offered only the extremely broad purpose of controlling and eliminating pollution, and that its narrow structure and limited mechanisms excluded any capacity for environmental management. The land use planning system provided by the *Local Government Act 1962*, similarly had little capacity for environmental management, as it was principally designed to regulate land use for the benefit of adjoining land owners. Although the Act governed land use for both subdivision and large-scale industrial development, it contained no mechanisms to evaluate the environmental, economic or social impacts of development on the surrounding region, and its focus was almost exclusively on the provision of infrastructure such as water, sewage, drainage, lighting and roads. Furthermore, there was no integration of the two Acts.

When the *Environment Protection Bill 1972* was introduced to State Parliament it was hailed as 'subjecting polluters to heavy penalties ... as deterrents against pollution of the air, water or land' (*Mercury*, 30 Nov. 1972: 1). Elaborate plans, including strict supervision, were said to have been formulated to ensure that the provisions of the anti-pollution legislation were observed by industry. Only those companies (nine in total, of which seven were pulp or paper or both) having legislated approval for the right to pollute would be exempt from those provisions, and only for a period of four years. After such time they would be expected to abide by the Act's standards and regulations.

Emission standards applicable to all pollutant sources were to be established by regulations under the Act, and source monitoring by industry, local government or

authorised government officers would ensure that discharges were maintained within these standards. Major potential sources of pollution, consisting of prescribed industries and municipal sewage works would be licensed and required to comply with conditions for operation. These conditions would be reviewed annually to provide for the effective and progressive control of discharges into the rivers within their 'acceptable levels' (*Mercury*, 30 Nov. 1972: 1). This annual review would be the principal means for pollution control. Powers would be given to local government to police the more numerous discharges of pollutants into drains, streams and tidal waters. In addition to providing a statutory basis for environment protection and the setting up of environmental advisory and appeal bodies, two of the principal objectives of the legislation were to establish a system through which wastes, pollutants and acts of pollution could be controlled, and to provide realistic sanctions for breaches of the Act. The expectations of the Act were that it would reduce the overall levels of pollution of Tasmania's environment, especially in the Derwent and Tamar rivers where it was accepted that waste discharges needed to be controlled to levels compatible with the assimilation capacities of the rivers.

Concurrent with the tabling of the Bill in Parliament, the Minister for the Environment revealed the Government's intention to establish new State Planning legislation to replace the *Local Government Act 1962*. This new legislation was intended to establish a planning and development authority to complement the environment protection legislation. Although the need for reform of land use planning was recognised, no new legislation was forthcoming, and it was not until 1985 that the *Local Government Act 1962* underwent even minor amendments.

The previous chapter provides overwhelming evidence that, in combination with the legislation governing land use planning, the environment protection legislation neither halted the continuing decline in environmental quality nor dampened the increasing conflict over development decisions. The faults are shown to lie broadly in the legislation's objectives, mechanisms, regulations and standards, and implementation and enforcement. Investigation of past incidents of environmental degradation and social conflict associated with development does not, however, reveal the legislative characteristics contributing to or supporting those faults. For example, such investigation does not highlight the role of the lack of integration of environment protection and land use planning, explain the consequences of the absence of strategic and local government planning, or reveal why the implementation of the legislation was poor and its enforcement fraught with difficulties. In this chapter I examine such characteristics and assess the legislation's strengths and weaknesses. This examination will, in chapter eight, form the basis for assessing the new System's potential to address

Tasmania's environmental and developmental problems. The examination involves a synopsis of the Acts, whilst, due to minimal documentation, the assessment is largely based on the results of interviews with persons directly involved in their implementation or enforcement or both. These interviews reveal very few positive qualities of the Acts, a result supported by the outcomes of the planning and development review process examined in chapter four.

3.2 *The Environment Protection Act 1973*

3.2.1 *Objectives*

The *Environment Protection Act 1973* contained no objectives *per se*, but granted the Director of Environmental Control the power to fulfil specific duties and functions (Tasmania 1973). These duties were to 'protect the environment in the State of Tasmania through the control, or prevention of any act causing or likely to cause pollution'¹ and through the 'co-ordination of all activities ... as are necessary to protect, restore or improve the environment of the State' (Tasmania 1973, s. 5(3)(a)(b)(c)). Though subject to the control of the Minister for the Environment, the functional powers granted to the Director to accomplish these duties were broad. They included initiating steps to prevent, control, abate or mitigate pollution, to investigate the problems of environmental protection, to constantly review the progress made in attaining the purpose of the Act, and to advise on the standards and criteria for environmental protection (Tasmania 1973, s. 5(4)). It was also the Director's responsibility to increase public awareness of the problems and remedies associated with protection of the environment, and to promote and co-ordinate short and long-term planning and projects in environmental protection.

3.2.2 *Administrative Structure*

The legislation was structured as a Ministerial model requiring the Director of Environmental Control to administer the Act subject to the direction and control of the Minister for the Environment. The Director's independence was further curbed in 1984 when legislation was introduced also obliging that official to consult with the heads of the Hydro-electric and Forestry Commissions before implementing any actions that would affect their operations. The Act established an Environmental Protection Advisory Council to advise the Minister and Director on environmental matters of community and State interest. In 1973 the Council consisted of nineteen persons.

¹Defined as direct or indirect contamination or alteration of any part of the environment so as a) to affect any beneficial use adversely; or b) to cause a condition that is detrimental or hazardous or likely to be detrimental or hazardous to i) human health, safety, or welfare; ii) animals, plants, or microbes; or iii) property.

Twelve of the nineteen persons were either heads of government departments or nominated by Ministers in charge of government departments responsible for agriculture, parks and wildlife, forestry and fisheries. The remaining seven were appointments made by the Minister for the Environment. Each appointment represented an organisation such as the Commonwealth Scientific and Industrial Research Organisation, the Tasmanian Conservation Trust, the Tasmanian Industry Association for Environmental Control, and the Municipal Association of Tasmania, and each was the Minister's choice from several nominations from that organisation. In 1991 not only was the constitution of the Council altered to eleven members, but its potential political orientation was largely removed. None of the members was a head of a Government department, or a Ministerial nomination, choice or appointment. The Council members were those individuals nominated by the organisations noted above, and three members were nominated by the University of Tasmania.

3.2.3 *Mechanisms for Pollution Control*

Pollution control was to be exercised by classifying industries into scheduled and non-scheduled premises according to type and size of operation. The classification criteria appeared in Schedule 2 of the Act. Scheduled premises required licensing by the Director and were subject to additional operating conditions at the Director's discretion. The enforcement of licences and any attached conditions were the responsibility of authorised officers from the Department of the Environment. The largest scheduled premises developments invariably became political decisions, with their licensing and operational conditions laid down in separate legislation. For example, the *Silicon Development Act 1986* allowed for the development of the silicon smelter at Electrona on the outskirts of Hobart, and the *Hellyer Mine Agreement Ratification Act 1987* gave the Aberfoyle Mining Company the right to expand the Hellyer mine's excavation and processing operations over an area of approximately 100 square kilometres on Tasmania's west coast. Each Act afforded the particular development freedom from all other Acts or by-laws, and therefore from any regulations, prohibitions, conditions or requirements contained within them. Permits and their enforcement for non-scheduled premises were the sole responsibility of local government, and were primarily governed by planning schemes developed by local government and authorised by the Commissioner for Town and Country Planning under the *Local Government Act 1962*.

Environmental impact assessment (EIA) for scheduled premises, indeed for any development, was not mandatory. The Act allowed the Director to request plans, specifications and descriptions of emissions and other information 'as he may require'

(Tasmania 1973, s. 24(1)(c)). The use of the term environmental impact statement was not specifically set out in the legislation, but the existence of Department of the Environment *Guidelines and Procedures for Environmental Impact Studies* (Department of the Environment 1974) was a clear implication that an EIS was to be part of the development approval process for operating scheduled premises under the *Environment Protection Act 1973* (Clark 1976: 3). This lack of compulsion to incorporate EIAs into the development approval process was not unique to Tasmania. Fowler (1982: 58) asserted that despite the widespread support for the concept of EIA amongst State governments in Australia, it remained that the greater proportion of State EIA schemes were based on administrative or policy directives rather than firm, legislative requirements.

The Guidelines contained a statement of State Government policy on EIA, followed by a detailed set of procedures with appendices designed to give indications as to how and in what circumstances the procedures should operate. The Policy statement indicated that an EIS must be carried out before a decision was made to proceed with a development which was likely to have a significant impact upon the environment of the State. The decision to require an EIA for non-scheduled premises rested with the authority responsible for the development (usually local government), but there was no direct legal power in the Act to enable the Director to enforce their preparation or use. According to Fowler (1982: 62), the Guidelines did not appear to rate public participation as a high priority objective of the procedures, and the policy statement was particularly significant for the total absence of any reference to the role of the public with respect to EIA. In Fowler's opinion (1982: 62), it 'would seem fair to postulate that such an attitude is a reflection of the broader desire to maintain political control over the procedures, and to avoid judicial or other avenues of open inquiry into proposals'. In this respect there were no opportunities for public comment during the EIA process unless the developer thought it beneficial, and opportunities for public scrutiny of an EIS only existed for scheduled premises where an appeal to the Environment Protection Appeal Board had been lodged against the approval of a development proposal. The Appeal Board (established by the Act), consisting of three individuals, again nominated by the Minister for the Environment, was to determine appeals only from those who had been denied a licence, disputed the conditions attached to their licence, or from any person who considered they may be directly affected by the granting of a licence for a proposed development.

Pollution control was implemented through State regulations and standards for waste discharges into rivers, estuaries, coastal waters, the atmosphere, and onto land. These regulations also included noise levels for vehicles, power equipment, and lawn

mowers. The regulations and standards incorporated into the Act were adopted from both national and international sources. For example, the standards governing fluoride emissions were adopted from the United States 1961 *Washington Fluoride Standards*, whilst the *Environment Protection (Water Pollution) Regulations 1974* (Tasmania 1974) consisted of regulations and standards adopted from the United States' *National Environment Policy Act 1969* (United States 1969). The sole means for enforcing the regulations and standards was the threat of prosecution. In 1980 the maximum penalty for discharging pollutants onto land, or into a water-body or the atmosphere was \$4 000. This was increased to \$100 000 in 1989. It was permissible, however, for an occupier of land to discharge pollutants in excess of the State's regulations and standards onto land or into a water body providing the pollutants were confined within the boundary of the occupant's property. Ministerial exemptions were available for those unable to meet the regulations and standards governing the discharge of pollutants.

3.3 The Local Government Act 1962

The *Local Government Act 1962* gave local government authorities the responsibility for land use planning within their municipal jurisdictions (Tasmania 1962). Planning schemes, based on land use zoning principles, were prepared by local government, and were approved by the Commissioner for Town and Country Planning. Objections to planning schemes were allowed, but were also restricted to those persons owning or occupying rateable property within the area affected by the planning scheme (Tasmania 1962, s. 727(4)). The Commissioner arbitrated on objections to planning schemes until 1985 when this role was transferred to the newly established Planning Appeal Board.

Land use zoning was used to segregate conflicting land uses such as residential and industrial and, although factories were excluded from residential zones and vice versa, local government held discretionary powers for approving development not permitted 'as a right' within these zones. All development was subject to siting and septic tank or sewerage provisions within the Act. Local government was also responsible for the subdivision of land. The Act's Seventh Schedule articulated the land use planning 'matters' to be provided for in planning schemes (Tasmania 1962). These consisted of infrastructure such as roads, sewage, drainage, lighting and water, the preservation of objects of historical interest and natural beauty, and the reservation of land for purposes such as afforestation, recreation, parks and playgrounds. In addition to the control and enforcement of planning decisions, the Act gave local government the power to control and enforce nuisance offences such as noise and offensive odours, and

minor environmental issues such as the preservation of trees. Prosecution of alleged offences was pursued through the civil court.

Strategic and regional planning was initiated in 1977 with the creation of the Department of Planning and Development responsible to the Premier. It consisted of three regional planning authorities comprising relevant government bodies such as transport, energy and industry, and liaised closely with the Town and Country Planning Commission. Its primary responsibility was to prepare master plans for government approval, but little strategic or regional planning was ever undertaken.

3.4 An Assessment of the Strengths and Weaknesses of the Two Acts

The purpose of the *Environment Protection Act 1973* was to limit the discharge of pollutants into the environment, and the Director was granted the powers to achieve those ends. However, as shown in chapter two, the expectations of the Act did not eventuate. In addition, the *Local Government Act 1962* not only contributed significantly to this increasing degradation, but diminished local governments' ability to deal with it.

Although amendments to both the environment protection and land use planning laws were undertaken between 1973 and 1993, I believe these gave the environment little respite from the continuing onslaught of pollutants. The most positive action in respect of improved environmental management during this period was the (political) move, initially by the Liberal Government in 1987, followed by the Labor Government in 1989, to phase out Ministerial exemptions. Under the Liberal Government all exemptions were to be removed within seven years, whilst Michael Field, leader of the new Labor Government, when taking office, stated that all industrialists holding exemptions had five years to meet the standards and regulations of the *Environment Protection Act 1973* and to surrender their exemptions before the proposed introduction of a new System in 1994. All but fourteen of approximately fifty three industries operating with exemptions in 1989 achieved this deadline, with the majority of offenders being local government officials unable to upgrade their sewerage works because of financial constraints.

It is not surprising, therefore, that in the interviews undertaken to assess the strengths and weaknesses of the legislation, it was attributed very few perceived strengths. Although the purpose of the *Environment Protection Act 1973*, in conjunction with the powers granted to the Director of Environmental Control to limit

pollution, were seen as sufficient to achieve improved environmental management outcomes, this was deemed to have been negated by the Act's provisions which focused exclusively on point source pollution control, and allowed indefinite Ministerial exemptions (Davies pers. comm. Jan. 1995). The one redeeming feature of the Act, according to Bingham (pers. comm. Nov. 1995), was its effectiveness in integrating the regulation of pollutants of water, the atmosphere and land within a single Act administered by one government agency. He contended that this integration was a great advancement, as many environment protection systems, especially in Europe, operated without this integration in either policy or administration, resulting in a confusion of roles and powers. Bingham (pers. comm. Nov. 1995 and Graham (pers. comm. June 1995) also contended that although the *Local Government Act 1962* was poor in all other areas, it had contributed to the protection of prominent cultural heritage areas such as the Hobart suburb of Battery Point. They attributed this protection not only to an awareness of the importance of cultural heritage in the sphere of local government, but also to the Act's explicit requirement for planning schemes to provide for the preservation of cultural heritage.

Five fundamental weaknesses in the legislation were identified through interviews with individuals responsible for implementing and enforcing the Acts:

- the *Environment Protection Act 1973* was seen to have focused exclusively on pollution control, precluding any attempts at environmental management;
- the *Local Government Act 1962* did not demand planning in the sphere of local government, nor was there any capacity, either in the Act or elsewhere, for strategic or regional planning;
- non-integration of environment protection and land use planning was believed to have been a major contributor to the environmental problems emerging from the Acts;
- implementation of the Acts was seen to have been profoundly affected by enforcement difficulties; and
- political manipulation and lack of political ^{will} was seen to have undermined the legislation's implementation and enforcement.

3.4.1 *Pollution Control Rather than Environmental Management*

The *Environment Protection Act 1973* was widely believed to have focused on pollution control and to have contained little or no facility for environmental management. Jones, Davies, Bingham and Graham (pers. comms 1995) all agreed that the major problem with the Act was its almost exclusive concern with pollution control

through concentration on point source emissions. This focus diminished its capacity to address diffuse pollution issues such as stormwater and agricultural run-off, and eliminated any consideration of a broader picture of the receiving environment.

Given the Act's focus on point source pollution control, and its requirement for licences to be issued conditionally upon compliance with the necessary pollution standards, it is not surprising that all persons interviewed agreed that the Act's greatest weakness was to allow such a proliferation of Ministerial exemptions. Between 1973 and 1989, 103 premises were granted in excess of 488 exemptions. Davies (pers. comm. Jan. 1995) proposed that the large number of exemptions arose because governments accepted industry's bluff that it could not afford pollution abatement costs, and if forced to do so would have no choice other than to close or relocate. This avoidance resulted in little conformity either by industry or government to the obligations of the legislation. The attitude towards exemptions is exemplified in the Department of the Environment's 1975 Annual Report. The Department considered that many industries and municipalities were 'not complying with the Act and risked prosecution by not applying for an exemption' (Department of the Environment 1975: 14). The requirement that licences need only apply to industries classified under the Act as scheduled premises was also believed to have intensified environmental problems. In this respect the Act did not apply to non-scheduled premises such as quarries with an annual output of less than 100 tonnes, and consequently the Act regulated the scale of development, rather than its environmental effects (Hay, pers. comm. Aug. 1995).

Another fundamental weakness in terms of the Act's inability to address environmental management was its approach to EIA. In the 1990s EIA is seen as the process of evaluating a development proposal in terms of alternatives, objectives, potential environmental effects, and both the mitigation and management of likely impacts (ANZECC 1991: 4). Such analysis should also involve a proposed programme of monitoring for predicted impacts and an audit schedule for compliance with conditions attached to the approval of the proposal. Environmental impact assessment under the Act typified the general approach to EIA in Australia. It was largely confined to a few high profile, large development projects, and was perceived by developers as another hurdle to be overcome in the development approval process (ANZECC 1991: 3, Jones pers. comm. July 1994). Moreover, this hurdle was oftentimes made easier through the production of EISs by consultants who served developers' interests, and whose work was often not evaluated by professionals in bureaucracy. The project-site specificity of EIA meant that its primary concern with end-of-pipe emissions precluded any integration of other factors, such as planning, into the development-approval process, effectively excluding social, economic and ambient environment issues.

Furthermore, the exclusion of such issues was made almost absolute by a process which concentrated on impact predictability rather than the evaluation of risk, and by a process which at best involved ad hoc public involvement.

Another substantial weakness of the Act was the absence of an obligation on the Director to undertake EIA. The licensing of scheduled premises obliged the developer to submit information to the Director to enable assessment of the environmental impact of a proposed development, but *only* 'as he may require' (Tasmania 1973, s. 24(1)(c)).

One can only conclude that the EIA process was largely symbolic, a conclusion which is strongly supported in that no follow-up was ever undertaken to assess the accuracy of EISs, or to enable any further development of the process. According to Davies (pers. comm. Mar. 1995), when analysis of past environmental impact assessments was finally undertaken in the late 1980s, it was discovered that environmental impacts had been far in excess of those predicted. According to Jones (pers. comm. Jan. 1995), the approach to EIA in Tasmania during this period largely depended on the political will of the government of the day - a situation common to all Australian States.

An all-encompassing hindrance to the Act's effectiveness was the number of agencies and industries exempt from it. These included the Commonwealth Government, some State government agencies, and rural and forest industries. The Commonwealth Government is exempt from State legislation on Commonwealth land, and Graham (pers. comm. Aug. 1995) argued that the Commonwealth could pollute without restraint. Davies (pers. comm. Mar. 1995) contended that the Commonwealth Government tended to ride roughshod over State legislation, refusing to conduct EIAs on developments such as airports and the communications towers on Mount Wellington adjacent to Hobart. He also argued that the Forestry Commission developed quarries (a Scheduled Premise under the Act) in State forests without EIA because its administration refused to recognise the jurisdiction of the Act. Croome (pers. comm. July 1996) supported Davies' claims, suggesting that in 1996 the Department of Environment and Land Management was still unsure of the location of all Forestry Commission quarries, whilst the Commission was reluctant to reveal the location of those of which it was aware.

3.4.2 *Lack of Strategic, Regional and Local Government Planning*

The interviews undertaken with those responsible for implementing and enforcing the legislation revealed that there was a real need for strategic and regional land use planning at the State level, but that it did not occur. Michael Stokes (1993: 22), a lecturer in Law at the University of Tasmania, claimed that there was no formal machinery for or legal recognition of State planning policies. According to Graham (pers. comm. Aug. 1995), Tasmanian State governments were collectively without vision or goal for development, and confined themselves to supervising planning at the local government level. One of the few attempts to develop a strategic and regional planning scheme was undertaken by the Tamar Regional Master Planning Authority in northern Tasmania. The Authority was funded from the six Municipalities for which it was the strategic and regional planning umbrella, but Sansom (pers. comm. Jan. 1995) claimed that when the draft Tamar Master Plan produced results which conflicted with the Municipalities' wishes, they withdrew their funding and the planning scheme was abandoned.

French and McMullen (pers. comms April 1995) argued that the absence of strategic and regional planning inevitably meant an under-utilisation of State infrastructure in some areas for services such as education, health, transport and sewerage, and an acute shortage of those services in other areas. Doole (pers. comm. May 1995) and Kirkwood (pers. comm. Sept. 97) respectively claimed that these circumstances were evident in the Kingborough and Southern Midlands Councils. These circumstances were also causing problems in the Sorell municipality where health services were closing their books to future clients because of the increased demand, education facilities were inadequate for student numbers, the forced upgrading of sewage treatment and water facilities were consuming enormous proportions of local government finances, and services such as road maintenance were being ignored.

As indicated above, planning legislation for local government was built into the *Local Government Act 1962*, with the Town and Country Planning Commissioner responsible for approving local government planning schemes. Gilblin (pers. comm. Jan. 1995) argued that the Act did not preclude good land use planning by local government, but that planning schemes were poor because there were no obligations upon local government to incorporate sustainable management principles into planning schemes, and land use planning was not well established, resourced or demanded by the community. Hay (pers. comm. Oct. 1995) agreed that in terms of obligation, the land use planning legislation left local government 'almost untouched'. He believed, however, that there was the tendency towards indifference, even hostility, among local

government officials in relation to matters of environmental management. He asserted that these attitudes were based on the belief that local government authorities saw themselves as facilitators, not regulators, of development. In defense, Nolan (pers. comm. April 1995) also claimed that the absence of progressive urban planning was not always a fault of local government. He cited innovative planning proposals initiated by the Clarence Council being frustrated by the Commissioner for Town and Country Planning who was not disposed towards innovation, and sometimes took years to approve them.

French, Baker and McMullen (pers. comms April 1995) contended that local government planning was also poor because local governments were uncertain of the objectives of the *Environment Protection Act 1973* and the *Local Government Act 1962*, and therefore were uncertain of the controls that could be imposed on development, especially subdivision. They argued that as a consequence, local government staff were not confident about tampering with any but the most peripheral conditions of developers' proposals. Local government personnel believed that it was impossible to refuse development approvals without sound legal reasons, such as unacceptable effluent discharges or noise levels for commercial development, or unacceptable boundaries, setbacks or sewage treatment facilities for urban development.

Others have severely criticised the planning legislation built into the *Local Government Act 1962*. Bingham, Graham and Sansom (pers. comms Jan. 1995) claimed that planning legislation did not require environmental, social or economic considerations, and that planning schemes did not question the environmental impacts of development. Close inspection of the Act's objectives, enshrined in the Seventh Schedule, support this claim (Tasmania 1962). Graham (pers. comm. Aug. 1995) argued that land use planning was confined instead to addressing issues such as traffic, privacy and amenity, and that land use planning by local government focused mainly on development control rather than development planning. Planning schemes in effect were merely inventories of land uses, and in most cases devoid of considerations for the conservation or management of the natural environment. One important consequence of the absence of development control was the loss of good agricultural land to rural-residential development. Although planning schemes were able to regulate subdivision, there was no necessity for them to do so, and Stokes (1993: 23) argued that, as a result, the system largely ignored this loss.

According to Graham (pers. comm. Aug. 1995) one of the major problems with land use planning was the use of zoning as a tool to achieve planning objectives.

He contended that the environmental impact of re-zoning for subsequent subdivision of rural land was enormous, yet subdivision was not classed as development and EISs were deemed unnecessary. Consequently, there were no legal obligations on developers, and no public rights of appeal or participation concerning issues such as stormwater control, vegetation and habitat destruction, and sewage disposal.

Jones (pers. comm. Jan. 1995) observed that land use planning through zoning had disregarded environmental management, and that land use planning has been far from ideal in addressing problems of zoning for development. He argued that, in general, planning schemes were not successful in separating out conflicting land uses. He cited the conflict between industrial and urban land use within municipalities at a regional level where the boundaries of adjacent municipalities meet with industry on one side and housing development on the other.

The issue of political will and intent at many levels (discussed in greater detail in Section 3.4.5) is a thread that binds all factors in the development-environmental management debate together. McMullen (pers. comm. April 1995) cited a lack of political will as the cause of the failure to incorporate environmental issues into planning in both State and local government spheres. He argued that planning legislation did not require the State to abide by planning recommendations, and that where planning schemes did address environmental issues, they were ignored. In the sphere of local government deviation from traditional land use development policy continued to be resisted by councillors and aldermen who feared that departing from the traditional land use precedent of the unfettered right to subdivide in accordance with the minimum of planning controls was a potential threat to their chances for re-election.

3.4.3 *Non-integration of Environment Protection and Land use Planning*

The limited capacity for effective environmental management in either environment protection or land use planning was compounded by the lack of integration of the two processes. With rare exceptions they operated in isolation, with development proposals running through separate environment protection and land use approval process channels, with the two rarely if ever meeting. The consequence was that approval was required by both environmental protection and land use planning agencies for the same development proposal, and the number of required approvals was again increased if issues such as cultural heritage or aquaculture were involved. According to Graham (pers. comm. Aug. 1995) this lack of integration gave rise to situations where a proposed factory development may have been granted approval by the land use planning agency, yet denied approval by the environmental protection agency.

Davies (pers. comm. Mar. 1995) asserted that the consequences of this fragmented decision-making process were exacerbated on those occasions when an EIS was deemed necessary for the approval process. In this situation, developers were faced with the requirements of multiple jurisdictions, each with different standards for similar circumstances, and often with obtaining approval from not only the environmental protection and planning authorities, but also from Federal agencies such as the Foreign Investment Review Board. Even though there had been twenty years of updating and amendment to the *Environment Protection Act 1973* by 1993, it did not result in any integration of environmental management and land use planning.

The lack of integration of environmental management and land use planning also resulted in significant duplication, confusion and uncertainty about approval processes in the sphere of local government. French (pers. comm. April 1995) contended, for example, that there was often a dilemma in local government, in its capacity as the planning authority, about whether it was entitled to object to the conditions placed upon a development by the Department of the Environment if it disagreed with those conditions. According to French (pers. comm. April 1995), these problems arose because the Department of the Environment was under-resourced, and because department officials had the power to dictate whatever conditions they considered necessary. The overall result was a fragmented view and approach to environmental management because decisions made solely by planning authorities were sometimes without any environmental considerations, whilst decisions made by environmental protection agencies were devoid of planning principles.

In addition to producing unacceptable planning and environmental management outcomes, the fragmentation of the development approval process created lengthy and unnecessary delays in development approval. These delays were an intense frustration to the proponents of development, both private and governmental, who lobbied with great vigour during the development of the new legislation in 1992-1993 for an integrated development-approval process. The Parliamentary Labor Party considered that the fragmentation of the approval process was a substantial impediment to the State's economic growth, and this recognition is revealed in chapter four as a fundamental motivation for the Labor Government's review of environment and planning legislation when it entered office in 1989.

3.4.4 *Difficulty in Enforcement*

The efficacy of the *Environment Protection Act 1973* was further reduced because of the difficulties involved with its enforcement. These existed due to the Act

containing limited enforcement tools, inadequate legal provisions, and an under-resourced enforcement capability in State and local government spheres. The Act's limited enforcement tools restricted authorities to licensing or prosecution as the only available means to induce industrialists to comply with the Act's provisions and regulations. This command and control approach offered no incentive to industrialists to improve manufacturing, waste production, or waste disposal processes. Furthermore, the necessity for industrialists to improve their production processes was completely eroded by the ease of obtaining Ministerial exemptions. Although exemption fees were introduced by the Labor Government in 1990 to dissuade industrialists from retaining their exemptions, they did not equate to proportionate penalties on industrialists for discharging pollutants into the environment. Rather they merely represented a standard ten-fold increase in the scheduled premise licence fee. According to Davies (pers. comm. Mar. 1996), the introduction of exemption fees was solely a means of generating revenue to meet a government debt interest crisis and, in most cases, was a negligible cost compared to the economic size of the industry, and the volumes of wastes discharged.

The Act also suffered significant legal enforcement limitations, making prosecution an involved, lengthy and uncertain exercise. These limitations resulted from severely flawed legislation which, according to Bates (pers. comm. April 1995), was unenforceable. Davies (pers. comm. Mar. 1995) contended that the difficulties arose from a combination of inadequate legislation and the civil court process. The civil court allowed the letter of the law to be debated and, because of badly worded legislation, proficient lawyers were able to argue, for example, that the discharge of blood into a water body did not constitute the discharge of offal, and subsequently no pollution offence had occurred. Civil court magistrates compounded the legal difficulties faced by the prosecution because they were inexperienced in environmental judgements, and their judgements did not reflect the principles of environmental management. Jones (pers. comm. Jan. 1995) and Doole (pers. comm. April 1995) contended that these circumstances led to an absence of enthusiasm by State and local government authorities to pursue legal prosecution for all but the most blatant infringements of the Act.

Not only were local government officials uncertain of their planning responsibilities under the *Local Government Act 1962*, but also their environmental management responsibilities under the *Environment Protection Act 1973*. This uncertainty arose, in part, because of the Act's poorly defined objectives. Bates (pers. comm. April 1995) suggested that because of this uncertainty, local government authorities were hesitant to prosecute even the most minor environmental nuisances.

Prosecutions for serious infringements of the *Environmental Protection Act 1973* were few, reflecting the legal difficulties in enforcing the Act, and the unwillingness to prosecute because of resourcing issues. For example, in 1989, Alan Sans, the Acting Director of Environmental Control, stated in his annual report that 'because the Department does not have a legal Officer, all prosecutions ... are referred to the Office of the Director of Public Prosecutions. The resulting difficulties in obtaining timely legal support as well as the complexities of providing technical evidence of offences have ended many possible prosecutions' (Department of Environment and Planning 1989: 47). The resources employed in environmental protection in both State and local government spheres were minimal, and their diversion for prosecution purposes may have been for lengthy periods and ineffectual outcomes. The lack of resources delegated to environmental protection and land use planning was exemplified, according to French (pers. comm. April 1995), in frequent requests to local government by the public after the Department of the Environment had failed to respond to their complaints regarding unacceptable waste discharges and noise emissions from scheduled premises. He contended that the department was 'quite happy' to allow local government to do the preliminary work, but noted that if local government could not resolve the problem without notice or enforcement procedures, the department was forced to intervene. French asserted that in these instances the department was not only lacking in resources, but also in the expertise to intervene effectively.

The lack of resources and expertise to enforce the Acts was highlighted in two separate incidents in 1993. According to Baker (pers. comm. April 1995), the Glenorchy City Council was prohibited from investigating an effluent problem at a food processing factory because the Council did not have authority to enter the premises without the presence of the State's only Food Processing Officer, who was unavailable. Doole (pers. comm. April 1995) recounted the occasion of an application to the Kingborough Council for development approval for a small electroplating industry, a scheduled premise requiring approval from the Department of the Environment. Having approached the department and received no adequate reply after a substantial period of time, and because the inordinate delay was steadily increasing the developer's annoyance and frustration, the Council sought and implemented environmental guidelines from Victoria.

3.4.5 *Political Manipulation and Lack of Political Will*

The duties, functions and powers granted to the Director of Environmental Control to achieve a pollution free environment were substantial. They were, however, under the direction and control of the Minister. Given the environmental outcomes

witnessed during the life of the Act, consecutive Directors either neglected their statutory roles and Governments were remiss in not rectifying that neglect, or Directors' roles were severely curtailed by political interference.

Political manipulation and lack of political will to implement the *Environment Protection Act 1973* are evident in most areas of administration, supervision and enforcement of the Act. These political traits have manifested in situations ranging from government disregard for its responsibilities under the Act, to revoking provisions of the Act when those provisions placed unwanted obligations upon government. The circumstances have ranged from the widespread granting of Ministerial exemptions which effectively circumvented the Act's standards and regulations, and the failure to require any consistent and meaningful level of EIA, to denying legislated rights of public appeal against development decisions. Between these extremes lay the starvation of government departments and agencies of the resources necessary to effectively and efficiently administer, supervise and enforce the Acts.

Ministerial exemptions were introduced to allow those industrialists professing their inability to comply with the pollution regulations a maximum period of five years in which to upgrade their manufacturing and waste disposal practices (*Mercury* 30 Nov. 1972: 1). The 1976 annual report from the Department of the Environment did not reflect this intent. It stated that exemptions had been granted in situations where they 'did not cause an acute danger', and where industry would have been 'unjustifiably disrupted' (Department of the Environment 1976: 21). Neither did the proliferation of exemptions reflect this intent. There were fifty seven premises operating under exemptions in 1976, eighty eight in 1977, and a maximum of ninety two in 1983.

Furthermore, the 1990 annual report from the Department of the Environment revealed that approximately twenty six premises had indefinite exemptions in 1985, and that the then current list included sixteen major Tasmanian companies, the majority of which had operated under ministerial exemption since the introduction of the Act (Department of the Environment 1990: 42). Davies (pers. comm. Jan. 1995) argued that these industrialists were given no time frame for waste disposal improvement processes and, in effect, had open ended exemptions which the Act allowed. According to the Acting Director of the Environment, exemptions could be issued without grounds for the exemption being specified (Department of the Environment 1990: 41). In his report, the Acting Director concluded that:

in the granting of Ministerial exemptions, social and economic reasons have outweighed environmental concerns, however, it is perhaps significant that the subject of Ministerial exemptions often went unmentioned, even in the Director of Environmental Control's Annual Report to Parliament and agreed improvement programmes were not, in the past, enforced (Department of the Environment 1990: 43).

The lack of political resolve to achieve sound environmental management outcomes was also visible in industry's response to government announcements to phase out exemptions. In the two years following the Liberal Government's announced intention to phase out exemptions, twelve of sixty eight exemptions were returned. In the five years following the Labor Government's announcement in 1989 to do the same, approximately \$250 million was spent by industry on upgrading manufacturing and waste disposal processes, and exemption licences for thirty nine of fifty six premises were handed back to the Government. These figures indicate that consecutive governments exercised almost absolute control over exemptions, and were prepared, against at times vehement opposition, to accept the environmental consequences.

Although the *Environment Protection Act 1973* contained provisions for wide powers of environmental protection, they were not pursued, especially in relation to EIA. The Department of the Environment often provided EIA guidelines for proposed developments, but the absence of legal obligations on developers to prepare EIAs meant they were mainly undertaken at political discretion. Hay (pers. comm. Oct. 1995) argued that the Act was ignored by the Department of the Environment until the late 1980s when political discretion began to reflect the potential political repercussions from the community's dissatisfaction with poorly assessed development decisions. Legal provisions for EIA were never introduced, however, and Lynch (pers. comm. Jan. 1995) claimed that the only obstacle to giving EIA guidelines legislative status was the lack of political commitment to the objectives of the Act.

The denial of the public's statutory rights appeal against development decisions is discussed in chapter two in relation to the Wesley Vale dispute, but it also occurred during the dispute over the Electrola silicon smelter. These were blatant and transparent instances of the absence of political will to pursue sound environmental management objectives in favour of an agenda that offered potential political gain.

The employment of inadequate resources by government to administer, supervise and enforce the Acts is widely evident, reflecting the absence of political will to achieve the Act's purpose. Annual reports to the Minister from the Director of the

Department of the Environment adequately highlight the lack of resources available to government departments administering the Act. In 1986 it was reported that general monitoring of scheduled premises was limited by the number of authorised officers, resources and funding, and monitoring by the department was undertaken only in response to public reports (Department of the Environment 1986: 19). At this time there were approximately 835 registered scheduled premises, the majority expected to undertake a regime of self-monitoring, but the paucity of these self-monitoring programmes revealed in the Prince of Wales Bay audit jointly undertaken by the Department of the Environment and Planning and the Glenorchy City Council (discussed in the previous chapter, s. 2.3.2.1) suggests that these scheduled premises were having a significant and deleterious impact on the environment.

Finally, brief discussion is required in relation to political will and the absence of environmental management legislation, particularly concerning land management and soil conservation on private land. According to Bates (1992: 149), criticism of the forest management practices of private companies in State Forest concessions, and of private land owners led to the enactment of the *Forest Practices Act 1985*. As discussed in chapter two, however, this Act exerted no meaningful impact on private land owners in relation to land management. Also discussed in chapter two is the shelving by the Liberal Government of the model soil conservation legislation proposed by the Labor Government in conjunction with the Federal Government in 1990 at a cost of \$238 000. The justification for shelving this legislation, legislation welcomed by all except many farmers, was the State Government's stated preference for 'land conservation by education and federal tax incentives' (Williams 1992: np). According to Tregenza (pers. comm. Jan. 1995) and McQuillan (pers. comm. Nov. 1995), this action was purely political.

3.5 Conclusions

The *Environment Protection Act 1973* and *Local Government Act 1962* had severe structural weaknesses compounded by poor implementation, enforcement and integration. In addition, the actions of staff in agencies and industries outside the Acts' jurisdiction minimised the Acts' overall effectiveness. The major structural shortcoming of the *Environment Protection Act 1973* was its focus on end-of-pipe pollution control rather than on environmental management; this precluded any ability for the Act to address diffuse pollution issues or the quality of the receiving environment. The latter issue was a shortcoming that contradicted the Minister's Parliamentary address that the operating conditions placed on industry would limit the discharge of pollutants by industry to 'acceptable levels' to reduce the pollution loads on the Derwent and Tamar

Rivers within a realistic time period (*Mercury* 30 Nov. 1972). This narrow focus was further diminished by Ministerial exemptions issued without Ministerial accountability and which effectively circumvented pollution controls. The Act was not without strengths, however, and was progressive in its integration of pollution controls for water, land and the atmosphere. This integration allowed the simultaneous control of pollutants in all environmental domains, rather than requiring separate Acts.

Sound environmental management was highly improbable whilst pollution standards were ignored, and whilst the environmental impacts of proposed developments were largely unknown. The status of EIA in the Act contributed significantly to the Act's shortcomings. Environmental impact assessment was not an obligation and was undertaken only according to government policy and political discretion. When an EIA was undertaken, for example, at Wesley Vale, it was found (by the Federal Government) to be inaccurate and incomplete. This situation was common to many EIAs where follow-up assessments found that the environmental impacts of development had far exceeded their predictions. The absence of a statutory EIA process in which economic, environmental and social impacts of development were considered can be seen to lie not only at the root of the decline in environmental quality, but also the serious conflict between the community and the broad spectrum of pro-development interests.

The structural shortcoming of the *Local Government Act 1962* was the absence of obligations for regional, strategic or local government planning. Regional and strategic planning simply did not occur, whilst local government personnel implemented development control rather than development planning. Land use development by local government was essentially confined to uncontrolled subdivision through the use of zoning as a development tool. Subdivision was not classed as development and not subject to any conditions. Development consequently proceeded without economic or social considerations, and its impact on the environment was largely unquestioned. These circumstances were, to varying degrees, created by an Act that was confusing for local government in respect of the Act's objectives and the powers it granted to pursue sound environmental management outcomes. In many instances, however, there was little understanding of land management objectives, and how those objectives could be achieved.

Problems concerning enforcement of the Acts were substantial. Industrialists could not be induced to conform to the standards and regulations of the environment protection Act, but only granted an operational licence and prosecuted for breaching that

licence. The ease of obtaining Ministerial exemptions removed the incentive for industrialists to conform with licensing regulations and standards, and prosecution was difficult because of the legal technicalities within the legislation, combined with a lack of resources in all enforcement spheres. The absence of resources denied personnel from the Department of the Environment the ability to adequately supervise and assess the licence conditions placed on industrial operations, to investigate industrialists' claims that their operations did not meet the criteria for licensing as scheduled premises, to assess industrialists' conformity to planning approvals, to investigate public complaints concerning industrial activities, and to gather information and to prosecute alleged offences. Civil courts were also found to be unsympathetic to the principles of environmental management, and resources may have been employed for lengthy periods of time without any meaningful outcome.

The difficulties in achieving sound environmental management outcomes due to the structural weakness in the Acts and the problems associated with their enforcement were compounded by the lack of integration of the environment protection and land use planning approval processes. Although development proposals required approval from both environment protection and land use planning authorities, the approval processes remained separate. Their separation led to the duplication of processes, confusion and uncertainty by both authorities and development proponents, and a fragmented view and approach to environmental management principles and the pursuit of environmental management objectives.

The political role in the ineffectiveness of legislation is clearly evident. The level of resources and political will are also inextricably intertwined, and the Acts suffered dramatically from inadequate resources for their effective implementation and enforcement.

It cannot be said that these problems were suddenly recognised during the final stages of the Acts' operation in the late 1980s. Continued calls for legislative reform, predominantly to planning legislation, were made from as early as 1977 (see Wilde 1977; Lyneham 1977; Field 1981; Nolan & Wild 1981). In 1987 the Liberal Government's Minister for Environment and Planning (Peter Hodgman MHA) responded to these calls, initiating a new draft Planning Bill. However, the Bill was subsequently shelved by Liberal Premier Gray. According to Bates, it was an example of the Liberal Government's record between 1982 and 1989 of 'castigat[ing] planning for stopping things from happening' (Tasmania, House of Assembly 1993a: 2217).

With the arrival in mainstream thinking during the latter half of the 1980s of the concept of sustainable development, institutions such as the State Labor Party, people in institutions such as the Legislative Council and the State Government Department of Environment and Planning finally began to recognise that Tasmania's economic and environmental pathway was unsustainable. The principal obstacle to responding to this recognition was, however, the lack of understanding of what constituted sustainability. Nonetheless, there was agreement that future sustainability could only be founded on major reforms to the current environment protection and land use planning legislation. The advent of the Labor-Green Accord Government in 1989 initiated delivery of this reform. The reform process included, but involved far more than, new legislation. It was ushered in by a new political perspective on the environment and sustained by a commitment to include all environmental stakeholders in the reform process. This commitment increasingly translated into uncovering the broad community's perceived strengths and weaknesses of the then current legislation, and respectively incorporating or eliminating them from the new System.

In chapter four I investigate the reform process, concentrating on the circumstances and events which informed this legislation intended to deliver a System that would provide sustainable outcomes. The investigation documents not only the manner and extent to which the above legislative weaknesses were addressed, but the path taken by Tasmania in developing its new System.

Chapter Four

The Reform Process

4.1 Chapter Content

The reform process involved several distinct stages prior to the emergence of the Resource Management and Planning System. They began with the advent of the Labor-Green Accord Government in 1989 and concluded with the System becoming fully operational under a Liberal Government in 1996. During this time the seven Acts (five major and two minor) comprising the System were passed by Parliament. This chapter examines the circumstances and events which constituted the reform process.

The circumstances underpinning the reform process relevant to the Labor-Green Accord administration include:

- i) the changing political attitude to the role of the environment in the State's future, and the perceived need to reform the existing legislation governing environment protection and land use planning to both accelerate and grant greater certainty to the development-approval process;
- ii) the Labor-Green Accord which was not only founded on an attitude of conciliation between development and conservation interests, but which harnessed that attitude in attempting to resolve, for example through the Salamanca Agreement (Forests and Forest Industry Council of Tasmania 1990), long standing resource management problems;
- iii) the structural reorganisation of government agencies undertaken to provide an administrative base capable of not only developing, but implementing a new Resource Management and Planning System;
- iv) the significant role of the Legislative Council (Tasmania's Upper House) in framing the System's objectives; and
- v) the Government's approach to legislative reform involving:
 - a) the staged review of existing legislation;

- b) the planning, environmental and administrative components considered necessary for implementing an effective and efficient environmental management and planning system; and
- c) the context of Labor's reform process.

The circumstances underpinning the Liberal Government's continuation of the reform process from 1992 to 1996 were:

- i) the Government's initial reluctance to proceed with the reforms;
- ii) the Government's eventual embrace, for economic reasons, of the previous Labor Government's proposed environmental management and planning system, but with major amendments to the System's administrative framework; and
- iii) the pro-development focus of the Liberal Government's reform process.

An important feature of the reform process, and one which can (largely only) be elucidated by inference, was the consultation process undertaken between the System's architects and those parties interested in the environmental issues involved in legislative reform. This process can be seen to have grown out of the sentiment of negotiation brought about by the Accord, and to have provided both an invaluable source of direction for the System's architects under the Labor Government, and the grounds for attenuating the pro-development philosophy of the Liberal Government.

4.2 Changing Political Perspectives on the Environment

The momentum for changes in political attitudes and decisions in relation to the environment in Tasmania increased rapidly during the 1970s and 1980s. The cornerstone for this momentum has been attributed to the founding of the United Tasmania Group in 1972 (Crowley 1989: 54). This group, formed out of the despair over the political processes experienced by those who sought to stop the flooding of Lake Pedder, is acknowledged as the world's first green political party (Haward & Hay 1986: 78). This momentum was then reinforced by the political mobilisation of conservation interests during the disputes over the Franklin Dam and Wesley Vale pulp mill. During this 20 year period the State, under both Labor and Liberal Governments, lurched from one environmental dispute to another, while the Green influence on State

politics slowly increased; an influence evinced by the increasing numbers of Green Independents (independent candidates standing for election on Green issues) elected to the Tasmanian House of Assembly. The Green discourse, although dismissed by many as a narrowly focused concern with wilderness and wilderness values, was understood by many others as promoting the reform of social values, including those necessary to address the growing ecological problems. Crowley (1990: 66) contended that these values involved issues of social justice, social responsibility and equity, and were seen to occupy a natural place within the Green perspective. In the final analysis, the appeal of the Green discourse can be interpreted as the desire of part of the community for a social and environmental value system different from that offered by mainstream political philosophies in which policies are justified solely in economic terms.

The evidence of changing political attitudes to the environment within mainstream politics, and the tangible emergence of environmental management reform, can be identified as first appearing in the State elections in 1989. According to Tanner (1993: 183), at the time that election was called, there was little indication of the political upheaval about to occur. The Gray Liberal Government had gone to the polls, supposedly in order to gain a renewed mandate to strengthen its bargaining position at a forthcoming Premiers' Conference. This view of the situation was disputed by the *Mercury* (19 April 1989, editorial), in which it was claimed that the reason was purely for political survival, the Government believing its election prospects were greatest at that time due to a leadership conflict in the Labor Party. Tanner (1993: 183) contended that it was initially widely believed that the Gray Government would be returned, albeit with a reduced majority. Both parties were stunned, however, when a poll commissioned by the *Australian* newspaper within a week of the election indicated a significant swing to the Green Independents (Haward and Smith 1991: 9).

4.3 State Political Reform

4.3.1 *The 1989 Election Campaign*

The Liberal Government ran an anti-Green, pro-development campaign, adopting the position that interference from both within and outside the State over environmental conservation concerns was delaying the Government's development agenda. Close (1992: 120) argued that the Liberals expected this campaign would attract voters opposed to the environmentalists, particularly the forestry workers and their sympathisers. One of the burdens that the Liberal Party could not avoid carrying into the election, however, was the significant public dissatisfaction with its handling of the Wesley Vale dispute. This dissatisfaction centred on its refusal to allow public involvement in any appeal process, an issue which extended to concerns about the

Federal Government's frequent intervention in the State's affairs over environmental issues.

The Labor Party's strategy was to promise broad and sweeping reforms affecting the processes of government as well as the conduct of Parliamentary business. A significant component of these reforms included proposals for broad and sweeping environmental reforms. Close (1992: 120) claimed, however, that this pro-environment stance was less than sincere, and was a response to the community's concerns with environmental issues. She quoted Alexander, the former State Labor Party Secretary, who stated that the pro-environment election platform was 'cosmetic'. Alexander (pers. comm. July 1996) contended, however, that the pro-environment stance reflected State Labor Party policy that the State's future depended on development within the constraints of, and in harmony with, the natural environment. At that time Hay (pers. comm. Aug. 1996) claimed that these attitudes towards the environment, although embedded within the Party's environmental policy, were in part foreign to mainstream attitudes within the Party, and were the product of a minority of members such as Pegg Putt and Bob Burton who later became prominent figures in the Tasmanian conservation movement. Labor's election manifesto declared that environment protection must be a top priority and, to these ends, emphasised three objectives: to preserve special areas in perpetuity, to establish new ways of effectively managing the environment and fighting pollution, and to encourage community awareness of the State's unique environment (Tasmanian Parliamentary Labor Party 1989: 1). The manifesto declared that a sustainable economy was compatible with these objectives, and that environmental protection made good economic sense.

Labor's overall election policy aimed to 'forge a new direction on the environment' (Tasmanian Parliamentary Labor Party 1989: 1). Labor recognised that environmental protection was a complex and difficult issue, and would require a comprehensive overhaul of administrative systems. The major components of this overhaul were to protect special areas of conservation value, strengthen the Department of the Environment which 'recent events had shown to be too small and under-resourced to effectively monitor and supervise State pollution controls', and undertake a complete rewrite and upgrade of the *Environmental Protection Act 1973*. The rewrite of the legislation was meant to impose stricter pollution controls and penalties, require mandatory procedures for environmental impact assessment, provide statutory community rights of appeal against environmental decisions by government, and require all Ministerial exemptions to be surrendered within five years. The policy on pollution penalties was unambiguous; most companies in Tasmania had freely used the State's scarce resources for too long, without being forced to clean up their polluting of the

State's air and water. The State Labor Party intended to impose a substantial pollution penalty on those industrialists operating with Ministerial exemptions, hopefully inducing them to pursue improved pollution abatement. Other components of this overhaul were to include a \$20 million clean-up of the Derwent, Tamar and North Esk Rivers, and the review of policies governing aerial spraying, coastal protection, the living and working environments in the State's towns and cities, and the protection of wilderness areas.

During the lead up to the State election in May the Green Independents cobbled together a set of policies that focused upon wilderness protection, forestry management, pollution controls, waste management, education reform, employment initiatives, Aboriginal land rights and decriminalisation of homosexuality. The Green Independent agenda, according to Lohrey (1990: 98-99), brought massive defections from the Labor Party not only by voters, but also by party activists. She argued that the defectors were critical of the economic rationalist policies of Labor, perceiving the Green agenda as the only alternative. She also contended that defections were not confined to the Labor Party, but cut across traditional class and economic lines, including, for example, traditional Liberal voters among small farmers concerned with their clean Green image on the European market.

4.3.2 *The Labor/Green Accord*

In the May 1989 election, seventeen Liberal, thirteen Labor, and five Green Independent candidates were elected to the House of Assembly. This electoral success for the Green lobby not only reflected the public discontent with mainstream politics that had been revealed in other recent Australian State elections (Haward and Smith 1991: 2), but heralded a broadening of alternative policy programmes. The Green Independents had again increased their formal political presence, this time holding the balance of power in the Lower House. Haward and Larmour (1993: 1) cited this as the first occasion in the Westminster system of Government (supported by the Hare-Clark system of proportional representation) that Green Independents committed to the 'new politics' of environmentalism had achieved this balance of power. After a period of substantial State political uncertainty, the five Green Independents combined with the Labor Party to give the Labor Party government, and this arrangement was formalised through the *Tasmanian Parliamentary Accord*¹. The Accord was a formal agreement between the Green Independents and the Labor Party which ensured the Green

¹See Larmour, P. ed. 1990; *The Greening of Government: The Impact of the Labor/Green Accord on Government in Tasmania*, Royal Australian Institute of Public Administration (Tasmania Division), Hobart.

Independents' support for a minority Labor Government, whilst avoiding the complications of a coalition.

The Accord committed the Labor Party and the Green Independent members of Parliament to work together to achieve a mutually agreed set of broad objectives. These consisted of the creation and maintenance of stable, open and community-responsive government, the enhancement of the role of Parliament and its individual members in the legislative process and development of government policy, and the introduction of social, economic, environmental and parliamentary reform (Tasmania, House of Assembly 1989). The environmental reform agenda under the Accord was equally as broad and included a comprehensive review of the State's forests in terms of their status for reservation or logging, as well as the commitment to implementing new planning and environmental assessment legislation (including the State's first soil conservation legislation), a consistent appeals process across all jurisdictions governing resource development such as mining, fisheries and local government, and new legislation for wilderness and wild and scenic areas. The agenda also included policy commitments of particular concern to the Green Independents. These included a maximum State export woodchip quota of 2.889 million tonnes, the prevention of future pulp and paper mills or a fourth export woodchip mill, the prevention of activities such as logging and road construction in National Parks, and the immediate nomination or gazetting of specific areas for World Heritage listing or National Parks.

The Labor-Green Accord formally lasted from May 1989 to September 1990 - the Green Independents formally withdrawing from the Accord (as a response to the Labor Government increasing woodchip quotas in contradiction to the Accord) 12 months before supporting a no-confidence motion in Parliament in 1991 which saw the end of the Labor Government. The Accord marked a historical event in the annals of Westminster Government, but also instituted a political landmark in Tasmania by introducing a formally negotiated agreement between traditional political opponents in respect of development versus conservation issues. This sentiment of negotiation was then harnessed to provide a means for resolving specific disputes between development and conservation interests.

The Salamanca Agreement, heralded as a breakthrough in environmental dispute resolution in Australia, and given considerable attention internationally (Sandford 1993: 128), was born of this sentiment. It formally committed forestry industries, the union movement, the government and conservation interests to work together to develop a long term strategy for forest management in Tasmania. The

negotiations foundered, however, over the inclusion in the strategy of a woodchip export quota that breached the Accord agreement. This breach led to the conservation movement withdrawing as a signatory to the strategy, and then to the Green Independents withdrawing their support for the Accord when the Government formally sanctioned the strategy. Although McCall and Cameron (1993: 432) attributed the failure of the Accord to the irreconcilable differences between the Labor and Green discourses, the lesson to be learned may lie in Sandford's analysis. She criticised this explanation as a 'convenient but simplistic political rationalisation advanced by all parties, each from its own partisan perspective' (Sandford 1993: 136). She contended that the Accord failed only because the conflicts which arose between the Government and the conservation movement were not taken to a dispute resolution stage - intervention by a neutral third party.

The major achievement within this sentiment of negotiation, and one largely attributable to the Accord even though it had been espoused as Labor Policy during the election campaign, was the Labor Government's reform of planning and development legislation. The negotiations underpinning this legislative reform were directly responsible for not only shaping the final legislation, but also for instilling industry's confidence in the Government's approach to reform. These reforms now discussed in detail, were quickly implemented by Labor on assuming office in May 1989.

4.4 Planning and Development Reform Under the Labor-Accord Government

4.4.1 *Phase One: Departmental Restructuring*

The Labor Government recognised the need for a fundamental departmental restructuring if planning and development reforms were to be achieved. It accepted that the existing Department of the Environment had neither the capacity to develop nor implement the necessary legislative reforms from existing State resources, and a single consolidated Environment and Planning agency was created in recognition of this deficiency. It comprised the Survey, Mapping, Valuation, and Property Services Divisions, all previously within the Department of Lands, Parks and Wildlife; the local government Office and Office of the Commissioner for Town and Country Planning, previously within the Department of Premier and Cabinet; the Land Titles Office from the former Law Department; and the Environmental Management Division, formerly the Department of the Environment (Bingham and Tsamenyi 1992). These service delivery Divisions of the new agency were supported by a Corporate Services Division. In recognition of the need for new and increased resources in the areas of planning and environment protection, areas previously undersized and under-resourced, an

environmental Planning Division was established. Furthermore, the Government increased the agency's staff by 15, and provided over one million dollars to upgrade equipment and undertake research into issues such as heavy metal contamination of the Derwent River. According to Bingham and Tsamenyi (1992), this was arguably the most extensive reorganisation ever of the State's administrative structure. It culminated, according to Hay (1993: 148), in an agency with the potential to integrate land policy, land management, improve the development-approval process, and provide a more coherent and effective environment protection capability.

Hay (1993: 149) contended that the most formidable obstacle to the Government's departmental restructuring and allocation of land-use planning responsibilities was the initial reluctance by resource agencies such as the Forestry Commission to accept the dominant role in land-use planning given to the Department of Environment and Planning. Hay argued that this reluctance was based on evidence of 'hegemonic aspirations' by the Forestry Commission to control land-use planning, but was also supported by existing circumstances. The most significant of these circumstances was that the Department of Environment and Planning had been given responsibility for controlling the allocation of large areas of Crown forest to Wood Production Zones according to the Forests and Forest Industry Strategy, an agreement between the State's major conservation bodies and pro-logging establishments. Other circumstances included the Legislative Council's fierce antagonism towards conservation agencies, and its long-standing and powerful alliance with the Commission.

4.4.2 *Phase Two: Staged Review of Planning and Development Legislation*

4.4.2.1 The Review of the Public Land Use Decision-Making Process

Most of the opposition to departmental restructuring was diffused by the Director successfully allaying many of the Commission's fears that the department was seeking control over forestry operations. Having overcome most of the obstacles to restructuring, the Government was able to initiate a phased review of the State's planning and development legislation. The phases were envisaged as sequentially addressing planning, environment protection, and appeals and enforcement legislation, but in practice the review of all three areas was undertaken concurrently.

Methods for allocating public land use were also in question as the public land use allocation decision process was widely accepted as unsatisfactory, a situation exemplified in chapter 2.4.1. The Government's overall strategy included reviewing this

process, but concerned at 'more than a decade of controversy and conflict caused by the development versus conservation debate on land use' (Tasmania, Legislative Council 1990a: 2), the Legislative Council assumed an immediate independent investigation. Their recommendations culminated in the *Public Land (Administration and Forests) Act 1991* (Tasmania 1991), the first and only Act of the suite of Acts comprising the new System passed by the Labor Government during its term of office, and were of great significance in shaping the System.

4.4.2.2 The *Public Land (Administration and Forests) Act 1991*

In the draft discussion papers for establishing a public land use authority, the Minister for the Environment, Michael Aird, described the existing decision-making process as inadequate and unrepresentative of contemporary thinking in two broad areas. Firstly, it was vulnerable to diverse political considerations within the State or to intervention by federal government - intervention which when supported by the Supreme Court had blocked the State Government's decision in the Franklin Dam dispute. Secondly, the decision-making process was seen as alienated by being confined to a bureaucratic committee and the Minister or Cabinet (Office of Minister for Environment 1991). The Minister considered that there was need for a formal mechanism to provide better information and advice in the political process, especially in relation to political decisions of State significance. He believed that an improved system would require, in addition to better information on which to base decisions, a transparent political decision process, greater opportunity for public participation, authoritative decisions in which people could have confidence, and a process that could operate effectively within the financial resources of the State. According to the Minister, this vision of an improved system required that all land use proposals should be assessed by an independent statutory authority with an appropriate charter and functional responsibilities. The Government's stated intention was to develop a new public land use authority based on systems in operation in other Australian States and the Commonwealth, and to take advantage of the excellent research and work undertaken by the Legislative Council's Public Land Use Committee.

The Legislative Council's investigation into public land use was undertaken through a Select Committee of Investigation established in October 1989. The Committee's first report, *Land Use Decision Making: A Tasmanian Challenge* (Tasmania, Legislative Council 1990a), was tabled in Parliament in June 1990 following a comprehensive consultation process that embraced industry, commerce, community interest groups, the Government, and the general public. The report was a landmark in political thinking in Tasmania, particularly concerning the principles of

sustainable development. It reflected what the Government was obliged to conclude from its own review of planning and development legislation: that there was a common desire for change, where 'an issue driven, *ad hoc* public land use decision process made in circumstances of political controversy and public conflict were now firmly rejected' (Tasmania, Legislative Council 1990a: 6). The report claimed overwhelming support for the 'development of a more systematic and predictable approach to resolving land use and heritage value questions', and that the context of this approach include 'a full evaluation of the wider social, economic and environmental implications' to achieve a more sustainable balance between competing demands (Tasmania, Legislative Council 1990a: 6).

The Select Committee expressed its support for many of the features suggested in the submissions (received during its consultation process) as essential for a contemporary decision-making model. Among these features were facilities for decisions to be made within clearly understood government policy that acknowledged the dynamic nature of land use and embraced the concept of sustainable development. The Select Committee also considered it essential that decisions were made only after 'significant and satisfactory' community and interest group participation had occurred, that a periodic review of land use decisions be undertaken, that land use categories include multi-use categories, and that in order to provide for the balanced use of the State's resources, the decision making process be 'facilitated by a statutory authority independent to that responsible for the management of public land' (Tasmania, Legislative Council 1990a: 17).

The Legislative Council reported briefly on two decision-making models it believed met the requirements outlined in the submissions: the Victorian State Land Conservation Council and the Commonwealth Resource Assessment Commission. The Victorian State Land Conservation Council model was a single statutory land use agency independent of public land management authorities, whilst the Resource Assessment Commission model offered a clearly articulated decision-making process. This process included a definition of resource use issues that involved the compatibility of all economic, social and cultural effects of resource use. It also included policy principles that integrated both economic and conservation interests, as well as optimising the nett benefits to the community from use of the nation's resources, and the matters to be addressed in the performance of the Commission's functions, including the identification of the extent of all resources and the assessment of all benefits and losses for the alternative use of resources.

The Committee's final recommendations were presented in *Finding the Balance: Public Land Use in Tasmania* (Tasmania, Legislative Council 1990b). Their recommended administrative model was one based on the Victorian State Land Conservation Council. The Committee endorsed the key elements of the first report, suggesting that policy principles should be enshrined in legislation, and that these principles should include the concept of sustainable development as defined by the World Commission on Environment and Development (the Brundtland Report)², public participation in each decision stage of the decision process, periodic reviews of land use decisions, and multiple land use categories. They noted that the Federal Government had enshrined policy principles, including the concept of sustainable development, in legislation, when establishing the Resource Assessment Commission, and that these principles were to guide the Commission in resolving competing claims for the use of resources. Although the Committee's and the Government's models for a public land use planning system varied, Hay (1993: 150) asserted that their similarities in important respects were sufficient for the Government to support the Committee's proposals. He argued that the Government's support, however, was given solely in order to establish in legislation what the Government considered was an all important Commission for the assessment of public land use.

The Public Land Use Commission was established with the enacting of the *Public Land (Administration and Forests) Act 1991* in November 1991. This was the Government's fulfilment of its stated intention to exchange closed government for 'an independent, transparent process ... for making public land-use recommendations to Government' whilst ensuring 'timely decisions at a cost which is affordable in the context of the financial resources of Tasmania' (Department of Environment and Planning 1991b: 1). According to Hay (1993: 151), in establishing the Public Land Use Commission the Government had taken a significant step in the comprehensive overhaul of the State's planning regime because it promised, in relation to Crown Land, the integration and streamlining of environmental and land use planning, better environmental performance, full public involvement, and government accountability in public land use decision-making.

These recommendations by the Legislative Council were instrumental in shaping the overall resource management and planning system for two reasons. The first concerned the recommendation to enshrine policy principles incorporating the concept of sustainable development in legislation governing public land use decision-

²'Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (The World Commission on Environment and Development 1987: 46).

making. This recommendation was enthusiastically seized by the System's architects who formulated a set of sustainable development objectives, in large part imported from New Zealand's *Resource Management Act 1991*, for the System's public land use component. These objectives, which appeared in the *Public Land (Administration and Forests) Act 1991* as Schedule 1, became not only the statutory objectives of the System's Public Land Use component, but also the statutory objectives for all Acts comprising the System: a truly landmark achievement in environmental management in Tasmania.

The second reason involved the Legislative Council's transcendence of its conservative nature that had historically rejected reform, especially reform connected to environmental conservation. In this instance that historical barrier was lowered because the Council, based on its understanding from its investigation of the public land use decision-making process, recognised the need for comprehensive planning and development reform. Sensing this opportunity, yet aware of the Council's disposition towards reform, the System's architects responded with a set of statutory objectives which were easily inserted into the *Public Lands (Administration and Forests) Act 1991* because 'everyone could see them fitting their niche either as economic development or environmental quality' (Bingham pers. comm. Nov. 1995). Whilst the *Public Lands (Administration and Forests) Act 1991* established the objectives and processes for public land administration, reforms to private land use decision-making processes were also taking place.

4.4.2.3 The Review of Planning Legislation

The Government's strategy for implementing its reforms to planning and development processes led to the release of three documents for public discussion in April and May 1991: (i) *Reform of Planning Legislation: A Legislative Option* (Department of Environment and Planning 1991d); (ii) *Review of the Environment Protection Act: Issues for Public Discussion* (Department of Environment and Planning 1991e); and (iii) *Appeals and Enforcement: Issues for Public Discussion* (Department of Environment and Planning 1991f). The first of these papers was initially prepared as the *Planning and Development Legislation: Discussion Paper* (Department of Environment and Planning 1991c). In it were outlined the proposed reform process and objectives, as well as proposals for establishing a new State planning administration, its powers and responsibilities, and the development of State planning policies and planning schemes. The proposed reform process was to establish new structures and processes for State planning and planning schemes. It would then enable administrators to revise the issues related to public land use decision-making, regional planning,

subdivision control, development-approval processes, environmental impact assessment, appeal mechanisms and pollution control. The objectives of the planning legislation review were to ensure that the reforms provided a clear outline of requirements on developers who in turn would be benefited through a 'speedy' result. It was also intended that the reforms should facilitate public involvement in the decision-making process, integrate environmental issues into all planning and development decisions, minimise overlap between State and local government roles, and produce a stronger coordinated State role in statewide planning objectives.

The Government's proposal for a new State planning administration was to establish a State Planning Commission comprising a board of experts either independent and responsible to Parliament, or under the political control of the Minister (Department of Environment and Planning 1991c). The Government favoured the former option, believing that a commission would provide wider participation in planning decisions than currently existed (with the Commissioner of Town and Country planning as the sole arbiter) by including representatives on the Commission from areas such as local government. It was emphasised that no formal mechanism currently existed for co-ordinating or implementing State planning policies, whilst there was also the need to reduce and better co-ordinate the controls exercised by different State agencies, especially in relation to planning approvals. State planning policies were envisaged as the means to address these statewide concerns by providing consistency between planning schemes on issues such as coastal management, land conservation, and urban strategies. In addition, State planning policies would contain all the policy objectives of the different State agencies, reducing the need for the multiplicity of approvals. The Government proposed, however, that the public be excluded from policy development, and that policies need only be subject to parliamentary approval.

The existing structures and processes for developing planning schemes under the Town and Country Planning Commission were seen as unwieldy and time consuming, anomalous in dealing with objections, and difficult to enforce. It was proposed that their development become the responsibility of local government, but that the State continue to be responsible for approving and dealing with objections to planning schemes. The significant proposal in relation to the development of future planning schemes was that the existing criterion of *direct interest* which determined a person's eligibility to object to planning scheme provisions be removed, allowing access to appeal for all persons. Public response was sought to all proposals raised in the paper, including recommendations for alternative mechanisms and development processes for State planning policies and planning schemes.

This discussion paper was later abandoned in preference to releasing a document entitled *Reform of Planning Legislation: A Legislative Option* (Department of Environment and Planning 1991d). According to a letter dated 18 February 1991 from the Director of Policy to the Minister for Environment and Planning, this preference was intended to shorten the time-frame for public consultation, and to ensure that all details of the Government's proposals were clearly understood.

4.4.2.4 The Narrowness of Initial Planning Reform

The document *Reform of Planning Legislation: A Legislative Option* (Department of Environment and Planning 1991d) outlined identical intentions for the reform process and reform objectives, but instead of canvassing public opinion for the preferred structure for a general land use planning system, presented the previously proposed option for a land use planning structure in the form of the *Draft Planning Bill 1991* (draft No. 6, 26 March 1991). In addition to establishing a State Planning Commission responsible to Parliament, the Bill articulated the membership and powers of the Commission, and the processes for developing State planning policies, including the content and mechanisms for developing, amending and appealing planning schemes. The public was encouraged to comment on all aspects of the document.

A feature of the paper was its limited discussion of the integration of planning and environmental management processes. At this stage of the review process the Government's perception of integration appears to have been confined to the integration of the activities of the agencies involved in planning and development, rather than the integration of the processes of planning and environmental management. This shortcoming was noticeable, for example, in the role of the proposed State Planning Policies. They were limited to co-ordinating the policy objectives of different government agencies to reduce the number of development approvals, as well as to providing consistency across planning schemes for Statewide issues. Two circumstances surrounding the *Draft Planning Bill 1991* may have contributed to this perception by the Government. The Bill was based on the previous Liberal Government's *Draft Town and Country Planning Bill 1987* which focused exclusively on planning issues. In addition, the *Draft Planning Bill 1991* (draft No. 6) was released without the substantial preparatory consultation undertaken in the review of the environment protection legislation that was to follow - perhaps as a consequence of the policy division of the Department of the Environment and Planning being 'driven by the imperative to get something out, given the history of previous failed attempts to put together planning legislation' (Bingham pers. comm. Nov. 1996). According to Davies (pers. comm. Mar. 1996), the Government's perception of integration only altered when

the review of the environment protection legislation revealed the broad support and preferred means for implementing a fully integrated system.

4.4.2.5 The Review of Environment Protection Legislation

The consultations for new environmental protection legislation began with Statewide workshops canvassing the weaknesses and strengths of the *Environment Protection Act 1973* with representatives from industry and commerce, State and local government departments, and the conservation movement. According to Bingham (pers. comm. Nov. 1996) and Davies (pers. comm. Mar. 1996) one of the important issues to emerge from these consultations was raised by the spokesperson for the Chamber of Mines. She contended that the Government's approach was focused largely upon planning issues, and neglected the opportunity to rationalise, in a regulatory sense, the multiplicity of approval processes currently existing. The issue of the approval process was also a key thrust of many submissions from members of other sectors of industry. They asserted that the approval process ought to contain a greater certainty and integration of steps than existed, because industry could abide by the Government's requirements yet still founder in the final approval stages, as had been experienced with Wesley Vale.

These attitudes by industry representatives concerning the development process were also a reflection of the message coming from the Australian Manufacturing Council (1992a: 2) which suggested that it was critical for government to provide a policy and planning framework in which industry could operate with confidence, and that the community be consulted and involved at all stages of development if companies wanted to enhance a project's chance of approval. This need was readily acknowledged by the Government and, mindful of the necessary environmental linkages, it began to construct the bones of a comprehensive package rather than individual packages dealing with land use planning, environmental management, and appeals and enforcement (Bingham pers. comm. Nov. 1996).

Documented details of these consultations, as previously noted, are limited, but some perspectives can be distilled from private documents made available to me. The first document summarises the proceedings of a workshop to discuss the inadequacies of the *Environment Protection Act 1973* (Office of Minister for Environment and Planning 1989: 2-3). The workshop was convened by the Minister for Environment and Planning, and was attended by the Minister, his Senior Private Secretary, the Secretary of the Department of Environmental Control, State Government

Agency officers, and Dr Gerry Bates (Green Independent MHA). A summary of the major points made during the discussion included the need to:

- i) reduce the conflict between the 16 or 17 Acts, including the *Environment Protection Act 1973* and the *Local Government Act 1962*, dealing with pollution control, through development of a single pollution control Act, and to unambiguously define the powers of various government agencies;
- ii) review the *Environment Protection Act 1973* in conjunction with the development of comprehensive planning legislation to arrive at the integration of the two Acts by way of a single development-approval process;
- iii) appropriately resource the new Act in both State and local government spheres to ensure it was not 'as big a bag of wind as the existing Act';
- iv) ensure all tiers of government, that is, Commonwealth, State and local government, were subject to the provisions of the new legislation;
- v) focus less attention on end-of-pipe pollution concentration limits, and to increase the focus on ambient quality;
- vi) review the current regulation categories and inconsistencies of the Act, as some may not only be illegal, but were effectively preventing government from tackling environmental quality;
- vii) review the 'laughable' enforcement provisions of the Act such as authorities being unable to obtain a restraining injunction on a polluting activity until after a conviction which sometimes required lengthy legal proceedings;
- viii) review the Department of Environment and Planning's incapacity to address questions of the siting of developments - as it was argued that greater integration of the provisions of the *Environment Protection Act 1973* and planning schemes were necessary, perhaps through the obligatory use of environmental impact assessment, to overcome the lack of obligation upon State or local government to abide by the recommendations of the department;
- ix) support the inclusion of an intrinsic value clause in the legislation similar to that in New Zealand's legislation;
- x) phase out Ministerial exemptions at the earliest practicable time; and

- xi) review the hazardous wastes regulations that were 'nonsensical'.

The second document, from the Director of Environmental Control to the Minister for Environment and Planning, concerned the need for a guaranteed development-approval process to overcome the existing problems for developers, and to satisfy the community's desire to participate in the approval process (Department of Environment and Planning 1990c). The Director stated that because of the significant economic, social, community and environmental impacts of major projects, decisions on the final approval for such projects were ordinarily made at Cabinet level. This mode of decision-making was claimed to be unacceptable for although legislation, regulations and by-laws were said to provide certainty insofar as the specific requirements of local government and State government departments were concerned, there was no statutory mechanism which supported or identified the approval process to be followed prior to the government's decision. According to the Director, past approval processes relating to major projects had been determined by the enactment of special legislation on an *ad hoc* basis or had been administratively imposed. It was suggested that these processes contained weaknesses that left developers unaware of the process they were likely to confront until after such legislation was enacted. Such legislation had also contained the potential for 'politicising' individual projects before all the information to judge their worth was available. *Ad hoc* parliamentary approval was also criticised for having been used to fast-track development proposals and deny public discussion and participation in the decision-making process.

The Director asserted that industrialists and developers were seeking as much knowledge and certainty as was possible about decision-making processes on major development projects in order to plan feasibility studies. He argued that the lack of certainty had inhibited the potential for development and possible economic growth. It was stated that experience had shown that the public and community groups were seeking the right to participate in the decision-making process, and denial of that right through fast-track legislation or inadequate opportunity to participate might delay and possibly prevent projects proceeding. It was proposed that a mechanism be developed which a) provided certain information and guidelines on the approval process prior to decision making on a major project, b) guaranteed public participation in the process, and c) retained sufficient flexibility to enable project specific approval process guidelines to be issued. It was considered that this could be achieved by defining major development projects, transferring them from the existing approval process, and applying instead, a set of major development guidelines. Final approval would be the responsibility of Cabinet, and be based on the recommendations of a major development assessment committee. It was suggested that supporting legislation could guarantee the

provision of information to the public and allow a right of participation in all major development approvals, require and authorise the Minister to publish the current Tasmanian guidelines on the major development-approval process, and provide a guaranteed time-frame for decision-making. In the opinion of the Director, this framework would provide the certainty in the development-approval process sought by developers and industry, and should be welcomed by the public and community groups. There were no foreseen financial costs to the Government, and it was suggested that legislation be enacted in 1990.

The final document is the summary of an environmental management seminar held in June 1990 by the Tasmanian Industry Association for Environmental Control, an association that played a visible role in consultations with the State Government in relation to industrialists' needs within planning and development legislation (Tasmanian Industry Association for Environmental Control 1990). Many of the speakers were federal or State politicians and State Government agency officials whose addresses I have excluded for not being relevant to the views of industry and industry consultants in relation to future legislation governing environmental management. These views can be summarised, however, as the clear and urgent need for all levels of government, existing industries, and developers to address the fact that environmental awareness within the community is an 'ideal which has found its time' (Tasmanian Industry Association for Environmental Control 1990: 2). Furthermore, the existing system was indisputably inadequate to meet the needs that this new ideal demanded.

The presentations by those affiliated with industry were diverse. The representatives from local government, whose primary concerns were the phasing out of exemptions for sewage facilities, argued that a significant increase in municipal rates would be needed to cover the cost of meeting the Government's deadline. They were concerned about the potential political ramifications of increasing costs to the community, and presumed the State Government was also aware of this potential. They also argued that the 1994 deadline for surrendering exemptions would not allow the introduction of new sewerage treatment technology, but only permit an upgrading of the existing facilities using proven technology.

Considering that my interviews with local government officials revealed a high level of concern with the environmental impacts of urban expansion, it is noteworthy that these issues were not raised at the seminar by the representatives of local government. A search of the files at the Municipal Association of Tasmania supported this conclusion. The files revealed that the Association's correspondence with

the State Government during the review process was confined to the issues of local government independence from State government interference, and a sufficient level of funding to local government to support that independence.

Recycling was another issue discussed by industry representatives who asserted that the environmental management issues of waste minimisation and the reduction of the use of raw materials faced several obstacles. The recovery rate of some waste materials in Tasmania was said to be extremely low. For example, the recovery rate for cans throughout Australia was 62.1 percent, yet in Tasmania it was only 25 percent. Industry representatives noted that the recycling of glass containers had been practiced for many years in Tasmania, but the market for refillable recycled glass containers was continuing to decline due to more stringent health requirements (Tasmanian Industry Association for Environmental Control 1990: 8). It was also argued that paper recycling, although philosophically appropriate, was in need of a proper perspective. According to industry representatives, paper recycling did not save trees or reduce energy consumption, and because paper fibres degrade, waste paper must be recycled down the quality ladder and can never be reused for newsprint. This problem was said to be compounded by the low consumer demand for recycled writing paper, compared to non-recycled white paper.

The Executive Director of the Australian Manufacturing and Industry Council spoke in defence of industry and mining being faced with additional environmental management requirements. He claimed that environmental management in these sectors faced formidable economic obstacles due to Australia's trading position with Europe having weakened. It was also increasingly difficult to attract overseas investment, South-East Asian countries such as Taiwan had overtaken Australia in exports, and Indonesia was competing with Australia for coal sales. He argued, in apparent contradiction to the official Australian Manufacturing Council policy for Australian industry to be adopting 'world class environmental practices' to ensure international competitiveness (Australian Manufacturing Council 1992b: 2), that the Federal Government was caught between ambition and reality. In his opinion Australia neither had the sophistication nor the economy to be a world environmental leader. He asserted that the Federal Government had adopted a preservation philosophy that was not 'sensibly appropriate' to Australia's economic welfare, as first-world environmental strategies could not reasonably be applied in this country. He suggested that environmental disputes in Australia were the result of the community's willingness to accept pronouncements by conservation interests about the effects of industries such as mining, without querying their factual basis. He contended that it was the responsibility of industrialists to communicate more effectively with the community to inform it of

their positive work. This perception was supported by at least one other speaker who claimed that the conservation movement's communication skills had enabled the Green lobby to achieve considerable political clout on the basis of controversy, conflict and public alarm.

A representative of the legal profession, Peter Cranswick QC, raised the need for more accessible and understandable laws for those required to conform to them. In addition to the need for clarity and accessibility he argued that new environmental legislation should contain certain facilities. These included a single system insulated from political point-scoring, ready access by the community to factual information, an avenue for appeals where costs were recognised and provided for, and a filter to eliminate silly appeals. He argued that until these matters were addressed, development in Tasmania would be limited due to the daunting legal hurdles to any major development, including the multiplicity of bureaucratic regimes, each with its own appeals procedure.

The Secretary of the Tasmanian Trades and Labour Council, Jim Bacon, stressed the need to protect both the workers and the community in the future structures for environmental management. There was, he asserted, an often-ignored connection between health and safety and environmental performance. He argued that the union movement was looking for long-term economic development and job security, and recognised that present economic decline was partly a result of conservation issues. He believed that a sensible approach to environmental debate and control could be achieved through full and open consultation within an atmosphere of trust between the community, workers, and industry. The (Tasmanian Industry Association for Environmental Control) seminar chairperson, Dr C. J. Hamdorf, supported this attitude, arguing that conflict resolution was the key to environmental approval strategies.

The initial consultations concerning the weaknesses of the environment protection legislation furnished a wealth of information which substantially altered the direction of the State Government's legislative reforms. Rather than pursuing narrowly focused planning reforms intended to streamline the development-approval process whilst isolating environmental management, the Government was awakened to the broad community sentiment for a single development-approval process that integrated planning and environmental management. The consultations also alerted the Government to the possibility that integration could be achieved using environmental impact assessment combined with numerous other mechanisms. These included a non-political and guaranteed development-approval process that granted community access

to development-approval and appeal processes. Furthermore, the process required a focus on ambient environmental quality, and the provision of effective enforcement capabilities, the facility for efficient conflict resolution, and the insertion in legislation of an intrinsic value clause such as appeared in the New Zealand legislation.

The consultations did not unearth unanimity on all issues. Some pro-development interests criticised attempts to introduce progressive environmental management regimes as inappropriate given Australia's economic circumstances, whilst the benefits of recycling were said to be exaggerated. In addition, the issues surrounding subdivision were not confronted, especially by local government. These issues are important in light of the legislative outcomes and will be revisited in chapter seven. The importance that the State Government placed on these submissions, however, especially those from industry, can be seen in the substantial broadening of the Government's proposals in its later papers, especially the *Reform of Environment and Planning Legislation: Overall Strategies* (Department of Environment and Planning 1991h) (see 4.4.2.9).

4.4.2.6 Initial Thoughts for Environment Protection Reform

The papers entitled *Review of the Environment Protection Act: Issues for Public Discussion* (Department of Environment and Planning 1991e), and *Appeals and Enforcement: Issues for Public Discussion* (Department of Environment and Planning 1991f) were released for public scrutiny and comment following the initial consultations concerning the strengths and weaknesses of the *Environment Protection Act 1973*. The first was a multi-purpose paper developed not only from the issues raised in the initial consultation process, but also through the incorporation of national and international initiatives and legislation. These included recommendations from the Federal Government's National Conservation Strategy (Australia 1984), National Soil Conservation Programme (1985), Prime Minister Hawke's 1989 statement on the environment in *Our Country Our Future* (Australia 1989), the Intergovernmental Agreement on the Environment (IGAE) (1991), and the Ecologically Sustainable Development Working Groups (ESDWGs) (Australia 1991 (Nov.), Australia 1992a). They also included principles from international initiatives such as the World Conservation Strategy (IUCN/UNEP/WWF 1980), the Stockholm Agreement (Friends of the Earth 1972, Rowland 1973), the Brundtland Commission (Brundtland 1989), and New Zealand's Resource Management Legislation (New Zealand 1991).

According to Davies (pers. comm. Feb. 1995), the degree of influence of these initiatives on the paper can only be inferred because of the absence of written

documentation. However, a brief glimpse of the content and chronology of these initiatives reveals the national and international context from which Tasmania's legislation emerged. Firstly it can be seen that at the time of release of the above planning and environmental protection documents in April and May 1991, the reform agenda was limited to existing national policies such as the National Conservation Strategy, the National Soil Conservation Programme and Prime Minister Hawke's statement on the environment in *Our Nation Our Future*. These policies were primarily guidelines recognising the need for the integration of environment and development, the maintenance of essential ecological processes and life support systems, and the need to optimise the net benefits to the community from the nation's resources. They provided little assistance to the System's architects in constructing the framework and detail required for either legislating sustainability or aligning the legislation nationally. Similarly, the World Conservation Strategy and the Stockholm Agreement (declarations which are discussed in detail in chapter six) offered the System's architects little more than the evolving principles of sustainability.

Glimpses of the dissolution of this impasse began to appear, however, in response to the growing international importance given to the Brundtland Report (World Commission on Environment and Development 1987). The Report (discussed in detail in chapter six) not only outlined the principles but also the necessary administrative structures and processes for achieving sustainability. According to Davies (pers. com. Feb. 1995), it was these principles, structures and processes that provided the initial direction for the System's legislation.

This impetus was closely followed by a simultaneity of events which supported and hastened the development of the System's legislation. At a meeting of Commonwealth and State Ministers in October 1990 it was agreed to establish the Intergovernmental Ministerial Council for National Legislative and Regulatory Environmental Protection Standards to work towards an Intergovernmental Agreement on the Environment (IGAE). The machinations of the IGAE can be seen to predate the legislation in areas such as the three tiered approach (federal, state and local government) to development and the details for EIA spelt out in Schedule 3. These details were to address the general discontent with the EIA process in areas such as the lack of access to information, lack of public right to involvement in the EIA process, the existence of multiple jurisdictions, and the broad acceptance that EIA was not resulting in an acceptable level of environmental protection. Attempts to address these issues are clearly evident in the System's legislation.

In August 1990 the Federal Government also established nine Ecologically Sustainable Development Working Groups (ESDWGs) which were to undertake a broad consultation process to 'consider the implementation of ESD principles in sectors of Australia's economy with major impacts on the environment' (Australia 1991: preface). The implications of implementing such principles were to form the basis of a national ecologically sustainable development strategy. The final Report from the ESDWGs executive (Australia 1991) consisted of an itemised but general approach to environment and development issues within Australia's major economic sectors. This approach is unmistakably reflected in the System's legislation in areas such as the provision of a policy process which integrates environmental decision-making with industry policy, the provision of measures which are transparent and predictable, and the provision of a decision-making process which includes effective consultation and an efficient and effective process for dispute resolution. Most importantly, however, as Hay (1993: 158) and Tregenza (pers. comm. Aug. 1994) stated, the difficulties in aligning the System's legislation to national policies diminished substantially because of the intermediary role of Tasmanian Government officers (specifically John Ramsay, Secretary of the Department of Environment and Planning, and Richard Bingham, Secretary of the Justice Department) who occupied prominent positions on the national environmental task forces responsible for drafting the IGAE and responding to the recommendations of the ESDWGs.

Due to the influence of the IGAE and the ESDWGs on the formulation of the System's legislation it is important to note that both received substantial criticism. For example, Eckersley (1995: 14) claimed that although one of the professed aims of the IGAE was better environmental protection, most of the provisions addressed the matters of streamlining approval processes, creating greater certainty and resource security, and providing more opportunities for consultation. Economou (1993: 158) supported this perception. He claimed that the IGAE was an attempt by the federal government to reconstruct the decision-making process for significant developments in order to avoid a recurrence of federal-state conflicts such as had occurred over Wesley Vale. Fitzgerald (1992) argued that the ESDWG process was driven not by environmental concerns but by the perceived need of business for quick decisions expedited by clear and consistent guidelines laid down in advance.

Beder's (1993a) discontent centred on the inadequacy of the consultation process undertaken by the ESDWGs. She argued that admission to the process was limited to representatives chosen from recognised interest groups who had faith in the process and, as a consequence, all but two mainstream environmental groups (the Australian Conservation Foundation and the World Wildlife Fund for Nature) had been

marginalised. The consultation process was also criticised by Formby (1993: 18) and Eckersley (1995: 16) as beset with rivalries which inevitably resulted in compromise and a set of 'lowest common denominator' policies. Hare (1991: 5-8) and Eckersley (1995: 16) believed the pro-development bureaucratic membership of the ESDWGs was largely responsible for these 'lowest common denominator policies'. In addition, Eckersley stated that the division of the Working Groups along traditional sectoral lines, for example, mining, manufacturing and agriculture, prevented adequate consideration of many important 'intersectoral issues' such as biodiversity, human health, urban development, employment and population. Hare (1991: 5-8) concluded that most of the Working Groups lacked a vision about the nature of an ecologically sustainable society, and that this lack of vision, combined with an over-representation of government officials reluctant to move away from departmental positions or to openly contemplate major changes in past practices, resulted in a short-term focus on many recommendations. He saw the major problems in the future implementation of the ESD recommendations lying in their ability to be deflected by hostile implementing agencies. Furthermore, the ESDWG's reports were criticised by all parties involved in those Groups as having been watered down by the Federal Government (Beder 1993b: xiii).

In response to the influences of the above national and international policy and legislation and, in contrast to the existing vague and broad provision 'to protect the environment in the State of Tasmania' (*Environment Protection Act 1973*, s. 5(3)(a)), the *Review of the Environment Protection Act: Issues for Public Discussion* paper proposed an explicit purpose for environment protection legislation based on a number of environmental principles. These included the need for ecologically sustainable development, the consideration of future generations, the public's right to information and to be informed about environmental decisions, the protection of conservation areas and maintenance of biodiversity, and a fundamental commitment to waste minimisation. It offered three administrative models for environmental decision-making: the Minister, an independent chief executive, or an environment protection agency.

One of the core components of the paper was an outline of the means for integrating environmental management and planning legislation through environmental impact assessment (EIA), thereby ensuring that planning decisions were made in an environmentally sensitive way, with all activities properly assessed for their environmental impact. It was anticipated that Tasmania would conform to the nationally agreed position on EIA (then currently being developed between the Commonwealth and State and Territories Governments for inclusion in the Intergovernmental Agreement on Environment), providing guaranteed community consultation and input into an assessment process that would have fixed time limits,

mechanisms to resolve conflicts and disputes over issues raised by the assessment, and most importantly, an indisputably transparent process.

The paper also proposed the use of various environmental management mechanisms. The primary mechanism, state of the environment reporting, would be used to measure environmental progress and inform the preparation of local, regional and State planning schemes and strategies. The fundamental role envisaged for state of the environment reporting was, however, in developing non-negotiable environmental policies that would identify and redress environmental concerns, and articulate standards, guidelines and criteria relevant to specific environmental circumstances.

Sound environmental management was seen to require effective pollution control strategies. It was proposed that pollution control be implemented through environmental quality goals based on the assimilative capacity of the receiving environments, and that these goals be achieved through negotiated programmes with industry, local government and community groups. The terms of these negotiated programmes such as licence conditions, management plans and the monitoring and reporting processes would be subject to public scrutiny. Economic incentives such as flexible fees, performance bonds, taxation provisions and clean technology incentives to industry were envisaged as enhancing these negotiated programmes.

Extensive provisions for the enforcement of the legislation were also canvassed. These provisions included the capacity for civil intervention as well as a tiered penalty system with gaol terms for acts of criminal environmental harm where civil intervention failed to achieve voluntary compliance with the objectives of the legislation. Because of the inextricable link between planning and environmental management, it was proposed that both environmental management and planning appeals should be heard before a consolidated appeal tribunal. As was proposed in the *Draft Planning Bill 1991* (draft No. 6.), the right to appear before the appeal tribunal would be available to any person. The discussion paper concerning the proposed consolidated appeal tribunal is covered in Section 4.4.2.8.

4.4.2.7 Public Response to Initial Thoughts for Environment Protection Reform

The paper prepared by the Department of Environment and Planning's Policy Division summarising the public response to the release of the *Review of the Environment Protection Act: Issues for Public Discussion* reported that thirty seven submissions had been received, whilst one hundred and forty people had attended public

seminars (Department of Environment and Planning 1991e). The general thrust of the submissions was reported as 'supportive of the approach taken and the issues identified'. Emphatic support was claimed for environmental management legislation to incorporate a set of environmental principles, with some authors of submissions wishing to extend this to incorporate specific objectives within legislation. In the paper the department reported that the integration in planning and environment legislation of elements common to both planning and environmental management had been widely endorsed. The important elements were identified as a single development-approval process incorporating both planning and environmental management processes and embodying levels of environmental impact assessment relevant to the risks posed by the development in question, a single appeal structure capable of handling all environmental related appeals, a facility for mediation in the approval and appeal process, and state of the environment reporting. There were mixed opinions about the need for a commissioner for the environment, but broad recognition of the need to separate the functions of those making the rules from those enforcing them.

Broad consent was claimed for the proposed pollution control measures. The promotion of environmental quality objectives, waste minimisation, clean production technology, a focus on the assimilative capacities of water and air sheds rather than point source pollution, and negotiated improvements programmes were said to have all been cited as desirable in the context of pollution control. Agreement for industry's licence conditions and management plans to be publicly available was asserted to be widespread. Economic inducements aimed at encouraging increased environmental performance were reported to be well accepted, but with qualifications that the concept required further development for the Tasmanian context. The concept of environmental policies was stressed as having been endorsed by all respondents, but integrated environmental and planning policies were believed superior to the individual policies presently being proposed. Civil enforcement provisions as well as tiered enforcement penalties were claimed to be generally accepted, but there was some consternation at the thought of gaol terms for environmental offences. The proposed appeal process received qualified support from all respondents, most favouring the extension of the role of the appeal body into the civil enforcement domain. The majority of respondents were reported to have applauded the proposal for third party appeal rights, with only two authors of submissions seeking to limit those rights.

The enthusiastic response to the State Government's proposals at this stage of development of new environmental management legislation indicated that the concerns of the many interested parties to the environmental debate had been heard and considered. Industry representatives strongly subscribed to the provisions outlined to

this stage, but were reported to have voiced concerns with one particular aspect of the reform process: the lack of integration of the environment and planning reviews with other proposed legislative reforms such as heritage and threatened species. They considered this integration essential given the Federal Government's emphasis on initiatives seeking to promote ecologically sustainable development. Industry representatives were also reported to be critical of the scant attention given to future standards and regulations, and because of this, they were uncertain about the future direction industry would be expected to take. The Government recognised industrialists' uncertainty and proceeded to provide a discussion paper to diffuse these concerns (see 4.4.2.10).

According to Davies (pers. comm. Mar. 1996), the officer co-ordinating the review of the *Environment Protection Act 1973*, this was a key decision point in the System's development, involving a change in direction toward integrating all developmental issues underpinning sustainability. This point of importance occurred primarily because the consultation process had provided the characteristics of a planning and environmental management system that interested parties to the debate deemed necessary, and the characteristics had received fundamental support from the broad community.

The discussion paper dealing with industry's concerns was subsequently released. However, in order to understand the evolution of the system, it is important to retain a loose chronological order in the analysis of papers released for public scrutiny. The paper released with the paper *Review of the Environment Protection Act: Issues for Public Discussion* dealt with the proposed mechanisms for appeals and enforcement.

4.4.2.8 Proposals for Appeals and Enforcement

The paper entitled *Appeals and Enforcement: Issues for Public Discussion* (Department of Environment and Planning 1991f) explored in detail the options for the consolidated appeal body which had been proposed in both the planning and environmental management review papers. The commitment to a consolidated appeal body was both Labor Party policy, and a condition of the Accord. The philosophy that influenced the appeal system was that 'the process of dispute resolution was more important than the nature and composition of whatever tribunal was created to determine such disputes' (Department of Environment and Planning 1991f: 11). Because the disputes would largely involve issues of public interest, the State Government favoured a non-adversarial system that incorporated minimal formal and legalistic processes, and that was capable of arriving at decisions based on merit rather

than on legal technicality. It was inevitable that this system was favoured by the Tasmanian Government. The system was similar to the existing Planning Appeal Board which had functioned very successfully and at low cost, in contrast to, for example, the New South Wales' Land and Environmental Court that was adversarial in nature, precluded broad public participation, and was expensive to administer.

To meet these criteria the department proposed a comprehensive dispute resolution system featuring a body capable of undertaking both planning and environment protection appeal tasks, yet one sufficiently flexible to be extended to other resource related decisions. The appeal body would hear objections against administrative decisions, and extend third party objection rights not only in the areas of planning and environmental protection, but also in other resource areas such as mining and sea fisheries. A voluntary dispute resolution stage with legally enforceable outcomes was also proposed. It was considered essential that the administrators of the appeal system should provide decisions as quickly and as cheaply as possible within an informal framework accessible to everyone, and where (they) had the power to determine (their) own procedures and award costs. Appeal to the Supreme Court for persons dissatisfied with determinations by the appeal body was accepted as a right, but in the interests of speed and certainty of decision making, it was considered that appeals should be limited to matters based on questions of law.

The proposed integration of the appeal system, as well as third party appeal rights were quantum leaps in Tasmania's appeal provisions. Planning and environmental management appeals had historically been undertaken by separate bodies, resulting in lengthy appeal processes, whilst appeal rights had historically been determined by the criterion of material interest (see chapter 3.3.3 and 3.4), a criterion which the incoming Liberal Government later unsuccessfully attempted to resurrect. Another innovative feature of the proposed appeal body was that it have a civil enforcement jurisdiction whereby it could order the cessation of polluting activities, and require remedial actions to either industrial processes or environmental damage. These civil enforcement provisions were intended to be substantial, being underpinned by prosecution through the criminal justice system if the orders of the appeal body were ignored.

The proposed framework for the appeal body was that it should take the form of an environment and planning tribunal consisting of three members. One member, preferably with relevant legal experience, should be the full-time chairperson, whilst one of the other two members should hold qualifications with relevant experience in the

subject area under appeal. The members of the tribunal, excluding the chairperson, should be constituted from a standing panel of people, the majority of whom were qualified in either planning or environmental issues. It was also envisaged that expertise in dispute resolution strategies be provided to assist opposing parties to resolve their differences prior to the need for a tribunal hearing. The outcomes from dispute resolution would be legally enforceable once approved by the Tribunal. The facilitation of public participation and accessibility to the appeal process were believed highly desirable, and it was proposed that an interveners funding panel be established by State Government. The panel's role would be to award funding for appeals by the community concerning issues of significant public interest, and where members of the community needed to acquire legal or technical expertise or both.

The *Draft Planning Bill 1991* (draft No. 6.) and discussion and information papers released to this point (June 1991) were the State Government's response to its intended planning and development reforms. This response was based on its initial understanding of the strengths and weaknesses of the existing legislation governing planning and development, and the needs of interested parties to the environmental debate. The broad community response to this initial understanding, however, moved the Government towards even greater integration of planning and environmental management issues. This broader system was outlined in the following paper.

4.4.2.9 A Broadening Vision of Environment and Planning Reform

In July 1991 the Department of Environment and Planning released another paper for public discussion: *Reform of Environment and Planning Legislation: Overall Strategies* (Department of Environment and Planning 1991h). The paper was a synthesis of the broad community response to the previously released papers, and presented a noticeable widening of the perspective on the proposed environment and planning legislation. In the paper the department highlighted the context for reform, outlining the need to update, in particular, Tasmania's planning laws to reflect existing needs. It also emphasised the need to integrate Tasmania's planning and environmental management systems which: were burdened with fragmented laws; inconsistent when dealing with public compared to private land; offered no clear differentiation of the roles of State and local government; and caused unnecessary delays and costs to developers and the community because of 'tardy and unclear' decision-making processes. The authors blamed the fragmented laws for past inappropriate and piecemeal development. In referring to 'we' (although the meaning is unclear), they accepted that improper account had been taken of the incremental environmental damage caused by a system which lacked a proper Statewide perspective, and which

provided no mechanism for such a perspective to be implemented. Furthermore, they acknowledged a failure to generate industrial, social and environmental policy in a coordinated way, and to having fostered land degradation and water and atmospheric contamination.

In the paper it was emphasised that international and national public policy in environment and planning was then undergoing rapid change, and that this change was influencing the process being undertaken in Tasmania. The international influence was attributed to the drafting of conventions on issues such as biodiversity and climate change. The national influences were attributed to the Federal Government's initiatives for ecologically sustainable development, the pursuit of micro-economic reform, the proposed national environment protection agency, the strategic initiative towards building better cities, and efforts to improve intergovernmental relations through the development of an intergovernmental agreement on the environment. The consequences of these international and national changes in public policy were anticipated to herald a new phase of social, industrial and commercial development that recognised the fundamental relationships between society and natural resources. The department asserted that planning and environmental reforms in Tasmania must reflect a recognition of these relationships.

In contrast to outlining the accepted shortcomings of past attitudes towards development and the environment, the department focused on the anticipated role of the new environment and planning system. The system would be central to determining the future of the State in terms of the nature of the community in which present and future generations would live. It was considered essential that the system provide for environmentally sensitive planning at a state strategic level, in addition to a framework for statutory land use planning and other government activities at a Municipal level. It was envisaged that the system would provide the means to integrate environmental protection and economic development, and that this integration would deliver ecologically sustainable development within a decision-making process which assured certainty to the community, industry and government. Optimal resource use was considered an essential issue within the new system. It was believed that no distinction should exist between public and private land, and that the rules governing the use and development of land apply equally to both, especially in relation to the common resources of air, water and soil and their quality.

The absence of guaranteed public participation in decisions concerning the State's future had been a motivating factor in the Government's initiating the review of

planning and development legislation - if for no other reason than removing the obstacles to development previously experienced from denying public participation. In the paper it was emphasised that the new system would not only permit, but would also facilitate public participation, and that this would occur at an early stage in the development process. The early consideration of community concerns was seen not only as beneficial to the process itself but, in classical political prose, as also allowing 'greater opportunity for a shared commitment to the future of Tasmania' (Department of Environment and Planning 1991h: 3).

Emphasis was also placed on the need and means for providing efficiency and accountability within the system. The separation of roles and functions was considered essential, especially in relation to State and local government planning responsibilities and resource employment. Past occurrences of State government control over local government planning responsibilities was considered to have been unnecessary, and would be eliminated in the new system by State and local governments having clearly defined planning roles and responsibilities. For reasons of efficiency, the development-approval process was also to be streamlined. This act would involve State Government providing developers a clear understanding of their responsibilities, whilst offering the 'speedy decision'. In order to develop a highly efficient approval system it was seen as necessary to have a highly synchronised approval process containing a minimum of bureaucratic intervention. Complementing this process would be the clearly articulated requirements of the approval bodies on developers, the community, and other approval bodies participating in the process.

In addition to outlining the context for reform, the paper introduced an outline of those components of the system that had not been previously released in any detail. These consisted of an integrated development-approval process, subdivision, and public land use decision-making. Each of these is discussed in turn below. Public comment was again requested and encouraged on this and all previously released papers.

4.4.2.9.1 An Integrated Development-Approval Process

Simplification of the development-approval process was again stated as being a key objective of the revision of planning and environment legislation (Department of Environment and Planning 1991h: 12). At this stage of the review the details of the proposed consolidated process were said to be unfinalised, but the architects of the new system had decided upon a possible working mechanism that contained two major components. The first involved all types of activities on land being subject to a level of environmental assessment relevant to their potential environmental impact. The second

component would enable the State Government to gather the multitude of separate statutes governing land use controls, for example, heritage, subdivision, land conservation and health, and which all required separate approvals, into one single planning instrument. The local planning scheme as proposed in the *Draft Planning Bill 1991* (draft No. 6) was seen as the ideal instrument for this purpose because, as issues such as heritage, subdivision and health were absorbed into State planning policies, they would be automatically implemented through local planning schemes. It was anticipated that the use of the local planning scheme in this manner would enable planning approvals granted under it to provide a consolidated and all-embracing approval. It was acknowledged that further development of the consolidated approval process was needed and that a public discussion paper would be released in due course.

In the paper it was claimed that some approval processes, especially for large projects, could not be handled through a local planning scheme and a future paper addressing the consolidated approval process was expected to address the issues surrounding the approval process for major development proposals. These proposals, because of their economic significance to the State, would require final decision making by the executive branch rather than being solely a bureaucratic decision. The matters briefly outlined were the criteria by which a decision could be made, the types of projects requiring assessment and approval by the executive branch, and the approval process.

4.4.2.9.2 Subdivision

The department saw it as imperative to reform of laws relating to subdivision. Subdivision had previously been exempted from all but the most minor of development controls, and it was now intended that subdivision should be treated identically to all other land use activities. To achieve this, the department proposed including the principles governing subdivision within local planning schemes. It also indicated that new legislation should allow for local Councils to levy the proponents of subdivision proposals for the cost of infrastructure required to support subdivision. A detailed discussion paper for public consideration of this issue was said to be under preparation. The legislation was also expected to provide for the imposition of bonds on developers to ensure compliance with subdivision approval conditions.

4.4.2.9.3 Public Land Use Decision-Making

The underlying philosophy in public land use decision-making was that the Crown should be bound by planning schemes in the same way as private individuals.

The expected exceptions would be major developments needing consideration at State political level, and some public land use decisions needing to be undertaken outside the normal planning approval process. The department contemplated that the appropriate decision-making process for these issues would be the Public Land Use Commission to be established under the pending *Public Land (Administration and Forests) Act 1991*.

The State Government acknowledged the need for an independent and transparent process for making public land use recommendations to it. The process should expose the full range of consequences associated with all public land use decisions so that both the Government and the general community could fully appreciate the costs and benefits to the State in the decisions made. In the paper it was asserted that such a process would need a comprehensive resource and conservation information base, and would provide adequate opportunity and encouragement for public participation, a well defined structure for decision making, public credibility, and consistency with general land use planning principles and processes. The major issue to be resolved was the character of public land use decisions which needed to go through this separate process, all others automatically coming under the jurisdiction of the planning system applicable to private land.

4.4.2.9.4 Regional Planning

The Department of Environment and Planning saw regional planning as the final component of the revised planning and development legislation. The department believed that there was no one correct way to establish regional planning and proposed a system it believed was flexible; allowing for both top-down as well as bottom-up direction setting. It was envisaged that the structure should allow for local input into the regional planning process, and that the regional plan would take the form of a State planning policy implemented through local planning schemes. A public discussion paper on the issue of regional planning was said to be under preparation.

The paper *Reform of Environment and Planning Legislation: Overall Strategies* undoubtedly marked a turning point in the vision of the new planning and environmental management system. The oft referred to development-approval process was now envisaged as an integrated approval process underpinned by environmental impact assessment and strengthened by combining existing fragmented legislation governing areas such as heritage and subdivision within one planning instrument - the planning scheme. The vision of the new system embodied in that paper was also evident in its proposed incorporation, within a single system, of issues such as an integrated appeal process, projects of State significance, and subdivision and

infrastructure costs. The system was in need of further integration, however, because the vision of State policies was still limited to planning.

4.4.2.10 Tending to Industry and local government Anxiety

The State Government's attempt to alleviate industry's uncertainty about future standards and regulations and the direction it would be expected to take on these matters resulted in the release in December 1991 of a discussion paper *Review of the Environment Protection Act 1973: Future Directions for Regulations and Standards* (Department of Environment and Planning 1991i). The paper, primarily for the benefit of those in industry and local government, contained a brief overview of the evolving global trends in pollution control, an outline of the core weakness of the existing system in relation to the current global pollution control philosophy, and an explanation of the Government's proposed standards and regulations requirements for industry during the transitional periods prior to and following the cessation of exemptions.

In the paper it was claimed that three evolutionary phases in the global approach to pollution control had occurred since the 1960s. During the 1960s and 1970s pollution control was dominated by a command and control approach that stipulated point source discharge standards, and prosecuted breaches of those standards. A sophistication of this approach was said to have occurred in the 1970s and 1980s, broadening the focus to include not only discharge standards but the cumulative effects of discharges on environmental quality, and the need for developers to demonstrate that discharges did not exceed the assimilative capacity of the receiving environment. The ensuing approach of the late 1980s and early 1990s was claimed to have introduced an emphasis on clean technology and waste minimisation. This approach which, it was admitted, had never applied in Tasmania, was now to be introduced through the use of plant and process audits to modify operating practices. These audits would, in turn, reduce waste and maximise process efficiency.

In the paper the department proposed that regulations should be seen 'as temporary resting places on the road to a goal of zero discharge' (Department of Environment and Planning 1991i: 2). It was suggested that Tasmania should pursue a long-term goal of zero discharge, particularly in relation to persistent bio-accumulative toxicants that were believed to be threatening species survival in natural ecosystems through their tendency to accumulate in the food chain, causing infertility and decreased breeding ability.

The paper's emphasis was given to the weaknesses of the existing regulations and standards. The fundamental weaknesses were said to be the inflexibility of the standards and regulations governing scheduled premises, combined with an exclusive focus on point source emissions. Inflexibility had precluded any discretion by the Director of Environmental Control to require more stringent standards in instances of discharges into particularly sensitive environments, or to relax the standards where less stringent standards would have provided adequate protection for the environment. Inflexibility of standards and regulations was also a major limitation to applying a more modern and sophisticated approach to environmental protection because it only allowed for a command and control approach to point-source discharges. This was perceived to have prevented any consideration of the problems of diffuse sources of pollution, any recognition of the capacity of the receiving environment to quickly assimilate organic wastes, and did not allow for the consideration of the cumulative effects from multiple site discharges. The department also claimed the format of regulations and standards was unclear and ill-defined, and combined with numerous amendments to them since 1973, caused continuing confusion to developers and their consultants.

4.4.2.10.1 Requirements on Industry Prior to the Cessation of Exemptions

In the period to June 1994, prior to the cessation of exemptions, the Government proposed to adopt a position that would eliminate or minimise adverse environmental effects by applying to industry the principles of clean production, best available technology, and waste minimisation. Operators of industry currently holding Ministerial exemptions would have to surrender those exemptions either by complying with the 1973 standards, or by meeting the new environmental quality objective based standards which were yet to be developed. New developments would need to at least meet the 1973 standards.

4.4.2.10.2 Requirements on Industry following the Cessation of Exemptions

The requirements on industrialists following the phasing out of exemptions in 1994 were uncertain and largely depended on the federal initiatives then being developed to provide a commonality of environmental standards throughout Australian States and Territories, and a uniform or at least streamlined development-approval process. The department believed it likely, however, that Tasmanians would be required to adopt the standards determined for the country as a whole through the expected obligations under the proposed *Intergovernmental Agreement on the Environment*. It eventuated that the State Government's obligations under the Agreement were substantial, and played an important role in shaping the final legislation especially in the context of environmental impact assessment, and the

approval process for major projects. The Agreement obliged Tasmanians to adopt environmental practices and procedures that promoted ecologically sustainable development through the effective integration of economic and environmental considerations in all development decisions. The Agreement specifically detailed the criteria for environmental impact assessment as a means to establish national uniformity and consistency of the process across all spheres of government.

In addition to its obligations under the *Intergovernmental Agreement on the Environment*, the State Government's explicit agenda was to phase out the discharge of bio-toxicants, and to reduce the discharge levels of other pollutants to those consistent with environmental quality objectives. Environmental quality objectives were conceptualised as the quality expectations required of a designated environmental 'zone' or 'use'. A zone would classify, for example, all or part of a river as pristine or recreational, whilst a use would classify, for example, all or part of a river for potable water, agricultural irrigation, or shellfish culture. Zones and uses would apply to water, land and air, have associated quality expectations requiring specific standards, and their overarching management objective was to prevent irreversible harm or long term impact to ecosystems. The standards calculated as necessary for achieving environmental quality objectives, as well as management plans and monitoring programmes, would be components of an industry's licence conditions, and those conditions would be publicly available for scrutiny and appeal.

4.4.2.10.3 Implementation

It was contemplated that the implementation of environmental quality objectives would be via State environmental management and planning policies to be established by the expected introduction of an environment planning Bill prior to 1994. Such policies could be instigated by the Department of Environment and Land Management, other State government agencies, the government, or the wider community. They would be developed through public consultation and require the approval of the government. The policies would provide details of the policy objectives, a statement of the zones and uses to be protected, the environmental indicators and discharge limits for those zones and uses, and details of the appropriate measures necessary to maintain use and zone objectives. It was anticipated that national standards concerning health or safety issues associated with particular waste discharges would also be incorporated into these policies. Compliance would be achieved through individual negotiated licence conditions in accordance with the discharge limits and management measures of the area of proposed development. The State Government was optimistic that the framework for environmental management and planning policies

would be developed in legislation prior to the phasing out of exemptions in 1994, and that the policies would provide all the necessary elements for implementing environmental quality objectives.

Environmental management and planning policies were now to be integrated, and were seen as central to the new system. They would not only provide the common enforcement instrument for issues such as coastal management, land conservation and heritage, but also have the capacity to implement strategies such as waste minimisation and recycling, through the planning schemes proposed in the draft *Planning Bill 1991* (draft No. 6). Their role, in large part modelled on Victoria's State Environment Protection Policy, would be to underpin the State response to important emerging land, air and water quality issues. They would also be used to establish a mechanism by which the requirements of the different State agencies could be implemented and co-ordinated, thereby simplifying the development-approval process, and guaranteeing a more consistent and coordinated approach in the development of local planning schemes. It was intended that environment and planning policies would evolve through circumstances such as the review and upgrading of existing standards, and the adoption of national air, noise, water and other standards, as well as the introduction of other environmental management issues such as hazardous substances, waste disposal and contaminated land.

The importance of the proposed environment and planning policies was also attributed to their supporting the introduction of state of the environment reporting. Such reports would be developed from the evaluation of the ongoing environmental outcomes resulting from the implementation of environmental quality objectives. These reports would be mandated in legislation and used as the supporting link and performance indicator against which to measure broad scale environmental progress, and the basis for determining the future direction of environmental management in Tasmania.

The State Government recognised that the proposed changes to environmental management were profound, and assured industrialists that it would pursue a cooperative management strategy in seeking a commitment from industry to achieve better environmental outcomes following the phasing out of exemptions in 1994. It informed industry of the likelihood that it would be required to meet stricter discharge standards and procedures for persistent bio-toxicants, and to review safeguards and monitoring procedures. Although existing premises would be forced to comply, any

change of standards, if stricter than those currently in place, would be phased in over a period of up to five years through negotiated performance improvement programmes.

4.4.2.11 Labor's Proposed Environment and Planning Legislation

The last planning and development paper released by the Labor Government before its fall in December 1991 was entitled *Environmental Management and Planning Legislation: Overview* (Department of Environment and Planning 1991j). It consisted of a package of two information papers and three draft Bills -- the *Environmental Management and Planning Commission Bill 1991*, the *Planning Bill 1991* (final draft), and the *Environmental Management and Planning (Consequential and Miscellaneous Amendments) Bill 1991*. One information paper consisted of a brief discussion of the Government's response to the submissions received from previously released documents, that is, the draft *Planning Bill 1991* (draft No. 6), and the discussion papers on the reviews of the *Environment Protection Act 1973* and appeals and enforcement. It also included an explanation of the environmental management and planning system to its current stage of development, and outlined the major components of the system still to be developed. Lastly it presented an overview of the proposed framework for integrating environmental management and planning, and briefly explained some of the components of the three draft bills. The second information paper consisted of an explanation of the use and application of state of the environment reporting in Tasmania. Public response was requested on the information papers and the three draft bills.

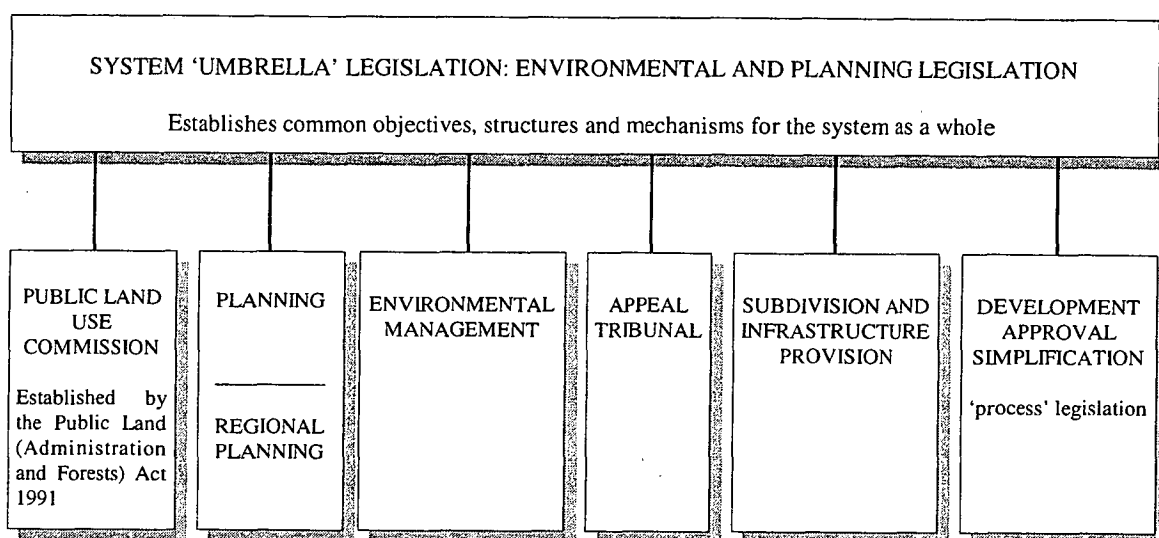
Many useful and detailed submissions were reported in the overview paper to have been received in relation to the previously released draft *Planning Bill 1991* (draft No. 6), and the information papers reviewing the *Environment Protection Act 1973* and appeal and enforcement mechanisms for the system. These were said to have resulted in the State Government reassessing its original proposals. Two particular themes were said to have emerged from the submissions: the need for a consolidated approach to both environmental management and planning legislation, and the need for a clear understanding of how the components of the proposed system fitted together.

The need for a consolidated approach resulted in the State Government reassessing the aim and objectives of the process of reform. The aim was established as the provision of 'structures and processes to enable the State to achieve the ecologically sustainable development of its land and other resources' (Department of Environment and Planning 1991j: 1). The objectives were established as an integrated environmental management and planning system, the provision of enhanced environmental assessment

in planning and development control (particularly environmental information), a stronger coordinated State role in setting statewide objectives, a simplified development-approval process, and improved public participation (Department of Environment and Planning 1991j: 2).

The proposed framework for the integrated environmental management and planning system appears in Figure 4.1. The framework related only to the environment and planning portfolio, and the State Government acknowledged that there was an obvious need for the integration into the system of other areas such as mining, heritage, land conservation, and fisheries.

Figure 4.1 Components of the Labor Government's proposed integrated environmental management and planning system (Source: Department of Environment and Planning 1991j:3).



In 1991 the components of the proposed framework were in varying stages of development: the Public Land Use Commission was expected to be established by the pending passage through Parliament of the *Public Land (Administration and Forests) Bill 1991*, and the revised *Draft Planning Bill 1991* and *Draft Environmental Management and Planning Commission Bill 1991* were awaiting public submissions. Future stages of the review process were intended to introduce legislation establishing the appeal tribunal, environmental management (pollution control), the development-approval process, a rationalised approach to subdivision and infrastructure (headworks), and regional planning. It is important to note that the proposed legislation governing

subdivision, infrastructure (headworks), and regional planning envisaged under the Labor Government did not eventuate, nor was it addressed by the new Liberal Government's final legislation.

This package of information papers and draft Bills constituted the Labor Government's conclusions about an environmental management and planning system best suited to Tasmania's needs. It was a system arrived at through an extensive period of examining the strengths and weaknesses of Tasmania's planning and environmental protection legislation, through canvassing the planning and environmental management needs of all interested parties, and incorporating the current approaches from national and international environmental management policy. The incoming Liberal Government completed the reform process. The following section examines the changes undertaken by that incoming government.

4.5 Liberal Government Amendments to Labor's Proposed System

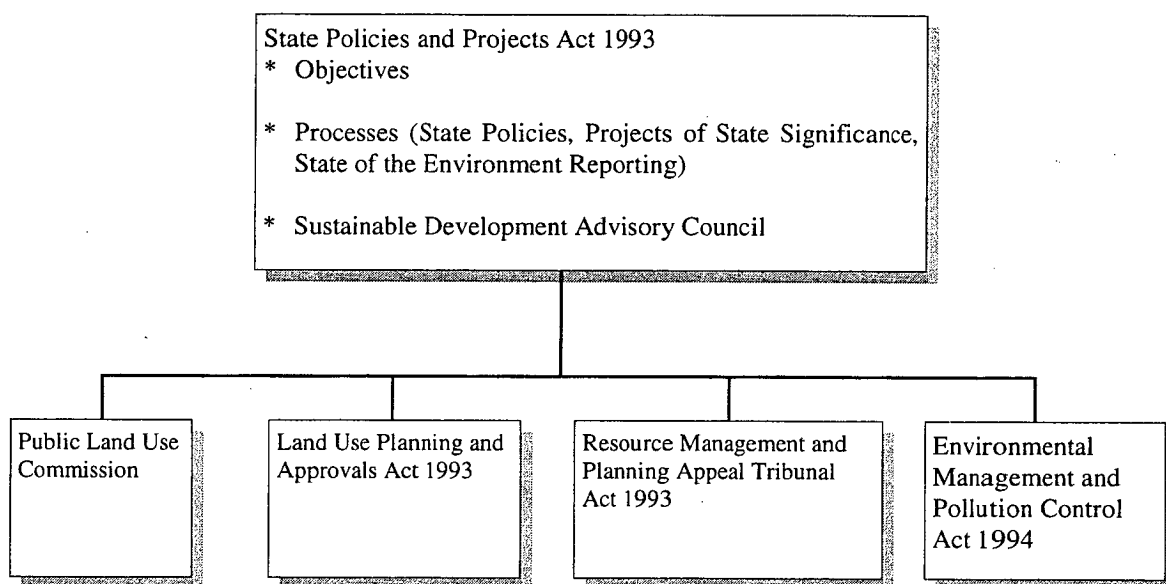
A comparison of the objectives, framework, processes and mechanisms of the Labor Government's proposed integrated environmental management and planning system (Figure 4.1) with the final legislation underpinning the Liberal Government's Resource Management and Planning System (Figure 4.2) reveals that the Liberal Government adopted the majority of the Labor Government's proposals. The fundamental divergence was the Liberal Government's substantial amendments to the administrative framework. The similarity between the Labor Government's proposals and the final legislation brought to Parliament by the Liberal Government existed largely for two reasons. The personnel responsible for developing the system under the Labor Government remained with the project through the change of government, whilst the Labor Government's proposed system, having been built upon a consultation process, was widely supported by industry and the broad community. The comparison below examines the framework components consisting of the umbrella legislation, planning legislation, the consolidated appeal mechanism, and environmental management common to both the proposed reforms and the final legislation.

4.5.1 *The Overarching (Umbrella) Legislation*

The Labor Government's proposed system was extensively mirrored in the Liberal Government's legislative framework. The proposed system included umbrella legislation establishing the system's overall objectives, structures, processes and mechanisms. Labor's umbrella Bill, the *Environmental Management and Planning Commission Bill 1991*, placed a legal obligation on the system's peak administrative

body, the recently established Public Land Use Commission and all other proposed bodies such as the resource management and planning appeal tribunal to abide by these objectives (Tasmania, Parliament 1991). In addition to this obligation, Labor also proposed a list of 21 considerations, adopted from the New South Wales Government environmental management system, to inform decisions on planning applications. This list of considerations was broad and ranged from appropriate referral to the provisions of State policies, to whether adequate provisions had been allowed for the preservation of vegetation, and the capacity of existing infrastructure to accommodate proposed development.

Figure 4.2 The Liberal Government's Resource Management and Planning System - Legislative Framework (Source: Department of Environment and land Management 1993: 5).



The objectives governing Labor's proposed system appeared with minor amendments in the Liberal Government's final umbrella legislation, the *State Policies and Projects Act 1993* as Schedule 1, although the list of 21 considerations was excluded. These objectives first appeared in the *Public Land (Administration and Forests) Act 1991* as Schedule 1. They were developed by Bingham and Davies in response to the recommendations by the Legislative Council Select Committee of Investigation into the public land use decision-making process that land use decisions be based on the principles of sustainable development. They were, in part, imported from the purposes and principles of New Zealand's *Resource Management Act 1991*. The objectives were, and remain:

- 1.a) to promote the sustainable management of natural and physical resources, and the maintenance of ecological processes and genetic diversity;
 - b) to provide for the fair, orderly, and sustainable use and development of air land and water;
 - c) to facilitate public involvement in environmental management and planning;
 - d) to facilitate economic development in accordance with the objectives set out in paragraph a), b), and c); and
 - e) to promote the sharing of responsibility for environmental management and planning between the different spheres of government and community and industry in the State.
2. For the purposes of clause 1a), sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while;
 - a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
 - b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - c) avoiding, remedying or mitigating any adverse effects of activities on the environment (Tasmania 1993a).

Labor's draft umbrella Bill, and the final umbrella legislation, included State environmental management and planning policies, and state of the environment reporting as the System's primary management mechanisms. State policies were to provide for the formulation and co-ordinated implementation of strategies to address Statewide issues. The implementation of these strategies would be via mechanisms such as planning schemes. In contrast to existing legislation, the Crown and its agencies would be obliged to abide by those policies.

State of the environment reporting was intended to be a mandatory responsibility undertaken by the peak administrative body every five years. The primary goals of state of the environment reports were to assess: current environmental conditions; progress made in environmental management; and provide improved information for determining the direction of environmental management and future development. The *coup de grace* of state of the environment reporting was, however,

the legislated obligation (*Environmental Management and Planning Bill 1991*: Part 4) and (*State Policies and Projects Act 1993*, s. 29(1)(d)) that the reports must include recommendations for the direction of environmental management and future development based on the data supplied by the report. The report must also be made public.

In 1992 the Liberal Government broadened the primary management mechanisms contained in Labor's draft umbrella Bill by introducing the concept of projects of State significance. The declaration of a project of State significance would allow the Government to isolate and exert greater control over the development-approval process for large and important development proposals. A project could be declared as significant to the State if it conformed to two of eight criteria. The project would then be subjected to an environmental impact assessment (EIA) under the direction of the System's peak administrative body, followed by the Minister's recommendations for the project being tabled for Parliamentary approval. This Ministerial decision-making model for major project approvals was introduced as a result of provisions in the *Intergovernmental Agreement on the Environment* granting accreditation to State government approval processes by the Commonwealth Government, thereby avoiding future Commonwealth-State government disputes such as occurred over Wesley Vale.

The Liberal Government's major amendment to Labor's draft Bill was the restructuring of the System's administrative framework. Labor's proposed peak administrative body, the environmental management and planning commission, was designed to integrate environmental management and planning decision-making, including the implementation of the anticipated State strategic directions plan, through its responsibilities for State policies, and for both environmental management and planning decisions. The Liberal Government replaced the proposed environmental management and planning commission with the Sustainable Development Advisory Council (Advisory Council), and established separate bodies to administer each of the environmental management and planning areas. Furthermore, Labor's proposal for a single independent administrative body responsible to Parliament was rejected by the Liberal Government, which placed the Advisory Council and the bodies responsible for environmental management and planning under the direct control of the Minister.

4.5.2 *Planning Legislation*

The Labor Government's planning reforms had been mooted in the draft *Planning Bill 1991*. The Bill incorporated the overarching objectives of the

environmental management and planning system, as well as subsidiary objectives specific to planning. These subsidiary objectives were intended to grant the necessary degree of flexibility for effective planning, flexibility that was denied through the existing mandatory adherence to a list of itemised criteria. The draft Bill required the peak administrative body and all decision-makers under the Bill to give effect to both objectives, whilst also requiring local Councils to 'have regard' for an attached list of 21 considerations (those appearing in the umbrella legislation) when making planning decisions. Under the draft Bill, draft planning schemes would be developed by local Councils, whilst the peak administrative body would be responsible for resolving objections and giving final approval to draft planning schemes. An important provision in the development of planning schemes was the removal of the restrictions on public participation, including the right of appeal, in the planning scheme development process. Any person would have the right to participate and or appeal, irrespective of their property interests.

The draft Bill also articulated the provisions for development control, appeals, offences and enforcement. The provisions for development control were based on the existing three tiered framework (permitted, discretionary and prohibited uses) for planning scheme control on land use. Development control would become the responsibility of all bodies and parties involved in the development-approval process, but principally the majority of approvals for development would remain the responsibility of local councils, with State and Commonwealth agencies only becoming involved in particular types of proposed development. Development control provisions included strict time limits on approval decisions, and also the ability for local councils to enter into agreements with developers. These agreements, which included financial bonds and guarantees, were intended to provide local councils with additional opportunities to make more appropriate arrangements under which development could proceed.

The appeals system proposed in the draft Bill consisted of a consolidated environment and planning appeal process where the right of appeal would exist for all persons. A broad range of councils' decisions could be appealed. These included amendments to planning schemes, dispensations from interim orders, and the granting, refusal or conditions attached to any planning approval.

Enforcement provisions, including civil enforcement, were designed to ensure compliance with planning schemes. Civil enforcement of development controls could be undertaken without the need to institute offence proceedings, that is, to avoid

resorting to prosecution in every case. These were based on provisions in South Australia's *Environment Protection Act 1993* which the State Government believed would provide the most efficient system for implementing development controls. Appeals and enforcement of the provisions of the system were to be undertaken by the proposed consolidated environment and planning appeal body.

The Liberal Government's planning legislation, the *Land Use Planning and Approvals Act 1993* (Tasmania 1993b), incorporated the majority of Labor's proposed provisions for a new approach to planning. The major exception was again the Liberal Government's amendments to the administrative framework. One of the responsibilities of Labor's proposed environmental management and planning commission was to resolve objections and give final approval to draft planning schemes. Having abolished the commission, the Liberal Government established the Land Use Planning Review Panel (Review Panel) to undertake these responsibilities. In addition, contrary to Labor's proposal for an independent planning authority, the Liberal Government placed the planning authority under the direct control of the Minister.

Except for changes to planning administration, Labor's provisions governing the preparation of draft planning schemes, development controls, appeals, and offences and enforcement were adopted in total by the Liberal Government. However, unlike most other provisions which they freely adopted, the Liberal Government initially attempted to restrict the right of appeal in order to retain the greatest possible political control over development. This matter is examined in detail in Section 4.6.2. in the context of the Liberal Government's influence on the legislation.

4.5.3 *The Appeal Tribunal*

At the time of its demise in November 1991 the Labor Government had not drafted a Bill incorporating its proposals for a consolidated appeal mechanism to deal with planning, environmental protection and enforcement issues. In summary, and as discussed in Section 4.4.2.5, the Labor Government proposed a comprehensive dispute resolution system featuring an appeal tribunal capable of adjudicating on all appeals arising from the environmental management and planning system. The proposed system was conceived as enabling third party rights of appeal, incorporating provisions for voluntary dispute resolution prior to a formal hearing, and offering intervener funding for technical and legal expertise, or in disputes involving significant public interest. It was envisaged that the appeal tribunal would have enforcement powers to instigate civil enforcement, and to prosecute through the summary court.

The consolidated appeal mechanism established by the Liberal Government through the *Resource Management and Planning Appeal Tribunal Act 1993* (Tasmania 1993c) was a comprehensive dispute resolution system featuring the Resource Management and Planning Appeal Tribunal (Appeal Tribunal). The Appeal Tribunal was responsible for adjudicating the appeals generated from all disputes, except those relevant to the development of planning schemes, in the areas under the jurisdiction of the resource management and planning system. Third party rights of appeal were embedded in the planning and environmental management legislation, and the Appeal Tribunal was bound to uphold these rights. Third party appeal rights applied to all development excepting for projects of state significance. The System's umbrella legislation, the *State Policies and Projects Act 1993* denied these rights. Such broad dispute resolution powers were designed to eliminate the previous multiplicity of appeal bodies, and the Act stipulated a maximum time limit of ninety days for the determination of any appeal. The Appeal Tribunal possessed the power to process civil enforcement, with subsequent prosecution to be pursued through the summary court. Appeal to the Supreme Court was possible, but only in relation to points of law. A voluntary dispute resolution process was established with the Appeal Tribunal having the authority to endorse the agreements reached through this process if the agreements fell within the Appeal Tribunal's authority. All appeals were to be held in public unless the Appeal Tribunal considered that the interests of confidentiality required that evidence to be given in private.

There were no substantial alterations, additions or exclusions to the Labor Government's proposals in the legislation. One noteworthy alteration was that in contrast to Labor's proposal that individual parties meet their own costs, the legislation allowed for the Appeal Tribunal to apportion the costs of the hearing according to the result of the appeal, any frivolous or vexatious issues, unnecessary or unreasonable delays in proceedings, and the capacity of the parties to meet an order for costs. It is also of note that the proposal by the Labor Government to allow intervener funding was excluded from the final legislation, a decision, according to Bingham (pers. comm. Nov. 1995) based solely on the State Government's inability to fund such a facility.

4.5.4 *Environmental Management*

The subject most comprehensively reviewed by the Labor Government, and the final component of the Liberal Government's Resource Management and Planning System, was environmental management. The Labor Government announced a raft of proposals based on its investigation of the existing weaknesses and strengths of the State's existing pollution control processes, as well as the global trends in environmental

management, but the change of government interrupted the formulation of draft legislation. These proposals, which are briefly summarised from the previous discussion papers, are compared to the Liberal Government's environmental management legislation, the *Environmental Management and Pollution Control Act 1994* (Tasmania 1994).

The Labor Government proposed that environmental management legislation should incorporate an explicit purpose for environmental management based on a number of environmental principles. It believed it was imperative that environmental management was integrated with planning legislation through environmental impact assessment to ensure environmentally sensitive planning decisions as well as a simplified development-approval process. It envisaged that this could be achieved by implementing a level of assessment relevant to the potential impact of a development on the environment, and that the assessment procedure be clearly articulated and encompass all social and environmental as well as economic issues relevant to the development.

State of the environment reporting and environmental management and planning policies, mechanisms to be established by the umbrella legislation, were proposed as the primary environmental management mechanisms. Environmental management and planning policies were to stipulate State strategic directions for future environmental management and development as assessed through state of the environment reporting. These management strategies were to include environmental quality objectives based on the assimilative capacity of specific areas classified as 'zones' and 'uses'. Other mechanisms for environmental management included economic incentives to industry for improved environmental outcomes, improvement programmes to enable industry to meet evolving environmental needs, and extensive enforcement and appeal capabilities that included civil enforcement of a tiered penalty system culminating in criminal prosecution for acts of gross pollution or environmental vandalism. It was the Labor Government's priority that public participation in the development-approval process was encouraged, and that third party rights of appeal exist for decisions made by the proposed executive administrative body, the environmental management and planning commission.

The Liberal Government intended that the System's environmental management component, the *Environmental Management and Pollution Control Act 1994*, would replace the *Environment Protection Act 1973*, incorporating its strength in integrated pollution control, while eliminating its weaknesses. These weaknesses were

seen as its focus on point source emissions to the exclusion of the assimilative capacity of the environment, and its alienation from other aspects of the State's resource management legislation resulting in a fragmented development-approval process. Magnifying these weaknesses were the inflexible regulatory standards and exclusively command and control enforcement mechanism which provided little incentive for environmental performance improvement (Department of Environment and Land Management 1993a: 3).

As a component of the evolving Resource Management and Planning System, environmental management was to be undertaken in accordance with the objectives of the System, that is, with Schedule 1. These objectives were reinforced through the concept of environmental harm, a concept that contrasted serious environmental harm to the less serious material environmental harm. This concept was adopted in the latter stages of development of the legislation from the Queensland and South Australian environmental management systems. Serious environmental harm constituted actual or potential harm to the health or safety of human beings. For it to be serious, such harm was to be of high impact or on a wide scale, have an adverse effect on the environment of a high impact or wide scale greater than an environmental nuisance, or result in actual or potential loss or property damage exceeding \$50 000. Material environmental harm constituted an environmental nuisance of a high impact or on a wide scale, with an effect greater than a nuisance but more than trivial in actual or potential harm to the environment or the health or safety of human beings, or having an impact resulting in actual or potential loss or property damage exceeding \$5 000. All the obligations and offences contained in the Act revolved around this principal concept.

Environmental impact assessment was a fundamental component of the System in integrating planning and environmental management, and the *Environmental Management and Pollution Control Act 1994* articulated the principles governing EIA. These principles stipulated that, where appropriate, the assessment must consider environmental, cultural, economic, social and health factors, including the provision for appropriate and adequate public consultation during the assessment process. The principles adopted were consistent with the principles outlined in Schedule 3 of the *Intergovernmental Agreement on the Environment*, and with the guidelines and assessment criteria prepared by the Australian and New Zealand Environment and Conservation Council (Australia 1992).

Integration of environmental management and planning was achieved through the assessment of proposed developments according to their potential impact on the

environment. Development was divided into three levels. Level one developments were subject to permits under a planning scheme and the level of assessment was at the discretion of the local Council. Level two developments were those activities defined in Schedule 2 of the Act as 'activities of environmental significance' requiring assessment in accordance with the environmental impact assessment principles articulated in the Act. Level 3 activities were those developments subject to the process of Projects of State Significance established under the *State Policies and Projects Act 1993*.

State of the environment reporting and State Policies, mechanisms established under the *State Policies and Projects Act 1993* were seen as the primary environmental management mechanisms. State of the Environment Reports were intended to play a major role in informing State policy which in turn would stipulate the direction for future environmental management and development of the State's resources. The equivalent of Labor's proposed environmental quality objectives was to be implemented through State Policies which had the flexibility to incorporate national water, waste, soil, and air-shed regulations and standards.

Additional environmental control mechanisms established by the *Environmental Management and Pollution Control Act 1994* included incentives for good environmental management practices, and environmental agreements consisting of the remission of fees and taxes to reward good environmental management performance. Voluntary and mandatory environmental audits also existed to allow development operators and the Director of Environmental Management to determine the environmental performance of development operations. There were provisions for the environmental management body to require financial assurances to ensure compliance with environmental management programmes, and to impose fixed term environmental improvement programmes (EIPs) on industries to ensure that they achieved compliance with the lawful standards and regulations. The details of these programmes were to be made publicly available.

Enforcement provisions were designed to allow for differing responses to differing degrees of environmental harm and culpability. The Director of Environmental Control could issue environmental protection notices where environmental harm was occurring, or had the potential to occur. These could request remediation of environmental harm that had occurred, and could require modifications to the conditions under which the operational permit was issued. Civil enforcement provisions allowed for the Director, local government, or any person considered by the Appeal Tribunal to have a 'proper interest' in the matter, to appeal to the Appeal

Tribunal for an order against an individual for non-compliance with any provision of the Act, a State Policy, any condition of a permit, or any requirement of an environment protection notice. The maximum fine that could be imposed on corporations upon summary court conviction for environmental harm ranged from one million dollars for intentional or reckless serious environmental harm, to \$250,000 for the less serious offence of intentional or reckless material environmental harm.

It is evident that, except for the addition of the concept of environmental harm, the Liberal Government instigated minimal changes to the Labor Government's proposals for the system's environmental management component. The one noteworthy change was again in relation to the administrative framework. Labor proposed that responsibility for environmental management would be undertaken by the system's sole and independent administrative body, the environmental management and planning commission. Having rejected this concept, the Liberal Government established the Board of Environmental Management and Pollution Control (Board) under the direct control of the Minister, as the System's administrative authority for environmental issues.

There were many important issues underpinning the Labor Government's proposals, the Liberal Government's continuation with the reform process, amendments to the Labor Government's proposed legislation, and the content of the final legislation. These are now discussed in the context of the comparison of the Labor Government's proposed reforms with the final legislation.

4.6 Major Influences on the Final Legislation

4.6.1 *Under the Labor Government*

The reform process begun by Labor was immense and included not only the core issues of planning and development, but also major reforms to local government to enable it to deal competently with the added responsibilities of a vastly remodelled system for environmental management and planning. In addition it began, but left incomplete, reforms to waste management, and nature guarantee legislation.

There were substantial difficulties in pursuing these reforms, however, and Hay (1993: 153) remarked that it was only the determination of the Minister for the Environment, Michael Aird, that kept the reforms progressing. Hay argued that the difficulties involved the Labor Government's perception that its future election prospects would be better served not with sound environmental achievements so much

as with its acceptance by the business community, the initial absence of national policies with which to align Tasmania's reforms, and the environmental groups' initial difficulties in contributing constructively to the reforms (1993: 153-158). The pressure on the Minister to pursue acceptance by the business community was also compounded by resistance to the reform programme from various sources. For example, people within Treasury were concerned with a progressively shrinking budget, resource development agencies and their Ministers were wanting to retain their independence; and some members of the human services agencies believed that the Labor Government was neglecting its traditional role in addressing social justice issues.

These issues can be appreciated more fully by focusing on earlier correspondence to the Minister for Environment and Planning from Premier Field. It reveals an obvious desire to implement short term economic reforms. Indeed, in the Government's Economic Statement in February 1990, a wide-ranging agenda of economic reform was announced. It included a reference to the 'development of proper planning laws to streamline the approval process and safeguard community and environmental concerns' (Tasmania, Government 1990). This initiative was identified by the Government as the number one priority of the Department of Environment and Planning.

The Micro-Economic Reform Committee was responsible for implementing the micro-economic reform agenda, and in a letter³ dated 3 May 1990 to the Minister for Environment and Planning, the Premier outlined the Committee's concerns in relation to environmental reform. It stated that 'the intentions of the Government in reviewing the legislation and its broader objectives in the areas of environmental, planning and development control, do not appear to have been clearly established'. The Premier subsequently asserted that 'it is essential that these matters be precisely specified before legislative proposals can be seriously considered'. The economic underpinning of environmental reform was further emphasised with the Premier questioning whether an 'incremental approach to reform may not perhaps yield substantially greater short-term economic benefits, whilst longer-term comprehensive approaches are being worked out'.

This sentiment is also evident in a document dated 6 November 1990 from the Department of Environment and Planning's Director of Policy to the Office of the Minister for the Environment (Department of Environment and Planning 1990b). The Director informed the Minister that in response to the Government's commitment to the

³ The letter is currently in the possession of the author.

review of Tasmania's planning and development legislation, a staged reform process was being undertaken in order to introduce two Bills to Parliament in 1990. The focus of these Bills reflect their economic intent. The first Bill was *The Development (Major Projects) Bill 1990*. It was to establish a system for the co-ordination of government approvals for major development projects. It was envisaged as an adjunct to the existing planning and development-approval systems, and superimposed an additional facilitating mechanism on those systems. The second Bill, tentatively entitled *The [Environmental] Planning Bill 1990*, was designed to streamline the process for the preparation and amendment of planning schemes. Central to this legislation was the imposition of time limits on local government and State agencies in preparing planning schemes. In addition it would include establishing a State planning commission for the purpose of avoiding criticism that significant powers were vested in one individual, the Town and Country Planning Commissioner, and to provide an opportunity for local government to participate in the final approval mechanism.

Hay (pers. comm. Oct. 1995) supported the claims for this sentiment, contending that the Minister and the Department of Environment and Planning genuinely pursued environmental management reform whilst under considerable pressure to align the reforms to an economic agenda specifically related to industry's access to an improved development-approval process. He confirmed that in large part the Government's attitudes towards environmental reform were a response to economic pressures resulting from the Government having inherited a State Treasury increasingly unable to meet its spiralling debt servicing requirements. In this respect he asserted that reform was largely motivated by the need to provide industry with an improved development-approval process as a means to attracting increased investment in the State. This was further reflected in the Government's action of introducing such short term revenue raising measures as enormous increases in licence fees for Ministerially exempt scheduled premises (Hay and Davies, pers. comms May 1996). This action brought a severe formal backlash from certain industries, for example, the Mt. Lyell Mining and Railway Company (which threatened to halt the voluntary environmental rehabilitation of its mining site), with which the Government had previously enjoyed cordial relations. In addition, Hay argued that industry itself was pressuring both the Government and its agencies for an improved climate for development.

Evidence of the Labor Government's determination to achieve increased development is, however, perhaps nowhere clearer than in the circumstances surrounding the dissolution of the Accord with the Green Independents. The Accord dissolved immediately the Government ratified the *Forests and Forest Industry Strategy* which included an increase in the woodchip export quota. The Government was not

blind to the ramifications of its actions. Michael Aird, the Minister for Environment and Planning received many anxious communications concerning the ratification, none more so than from Richard Jones, a Labor member of the New South Wales Legislative Council. In a letter⁴ dated 28 September 1990, Jones claimed that the decision to ratify the Strategy 'would instantly dissolve the Accord' and may be a decision with the 'potential to destroy all prospects for a future Labor Government in Tasmania'. He considered that ratifying the Strategy would be 'a betrayal of the promises on which the Government was elected', and that the example set by the Tasmanian Government would determine how environmentalists throughout Australia viewed the Australian Labor Party. He urged the Minister to stand by his commitments to the environmental movement and not to sacrifice Australia's environmental future for the sake of a 'few greedy lobbyists'. Ironically, the Tasmanian Chamber of Commerce, in a letter⁵ to the Minister for Environment and Planning dated 28 September 1990, urged for the adoption of the Strategy 'as a matter of urgency'. The Chamber of Commerce believed this would rectify the uncertainty created by the conservation movement, and seize the opportunity to achieve a desperately needed 'stable economic climate to create confidence and encourage investment'.

The effect of this economic focus was visible in the proposed umbrella legislation, the *Environmental Management and Planning Commission Bill 1991*, in terms of the orientation of the membership of the system's peak administrative body, the environmental management and planning commission. The Government proposed that the commission consist of five persons. Four persons were potentially political appointments, whilst the fifth person was to be nominated by the Municipal Association of Tasmania, a notoriously pro-development body.

The second obstacle to continued reform, the absence of federal policies with which to align Tasmania's reforms, was only removed after several months of the Labor Government. As is discussed above, this obstacle was overcome as a result of the initiative of State and Commonwealth Ministers to pursue an intergovernmental agreement on the environment, and by the Federal Labor Government establishing the Ecologically Sustainable Development Working Groups. These federal linkages were then further strengthened with Tasmania's role in developing, and later as a signatory to the *Intergovernmental Agreement on the Environment*, and the Ecologically Sustainable Development Working Group Reports.

⁴ Currently in the possession of the author.

⁵ Currently in the possession of the author.

According to Hay (1993: 153-155), the obstacles posed by the environmental groups' initial inability to participate constructively in the Minister for the Environment's reform agenda were significant. He argued that the Minister's working relationship with the Green Independent members of Parliament, particularly Bates, Milne and Hollister was constructive, and resulted from active involvement by the Independents. Hay reports the Minister's relationship with the environment groups, however, as having been far less positive. The groups' actions were described as 'overbearing', and 'priggishly self-important', and it was suggested that the activist leaders had been unable to surmount the 'confrontationist attitudes of the forest blockades' to meet in a spirit of deliberation and co-operation. According to Michael Lynch (pers. comm. Jan 1995), the Director of the Tasmanian Conservation Trust, this was a consequence of the disappointment and frustration felt by the environment groups over a process that was achieving little because of its lamentably slow pace. Richard Bingham (pers. comm. Nov. 1995) contended that the environmental groups were initially sceptical of the Government's agenda, and this was understandable given the history of government-environment group relations. He contended, however, that their distrust diminished as the review process progressed and as they realised the genuine attempt by those drafting the legislation to implement sound environmental management principles. Bingham claimed that the contribution of the environmental groups to the reforms, especially under the Liberal Government, was helpful and constructive, and that their perspective brought a greater balance to the final legislation.

According to Hay (1993: 154-5), the antagonistic attitude manifested earlier by the environmental groups produced two important effects. First, there were few Ministerial voices within Government supporting the interests of the environment, and the conflict with the environmental activists left those few voices with little support for environmental interests outside the Government, making the implementation of sustainable development ideas all the more difficult. Second, conflict with the environmental activists resulted in the consultation process undertaken during the development of new legislation being used to far greater advantage by energetic and enthusiastic pro-development interests. Hay (1993:56) stated that 'at best this was unhelpful; and at worst it was positively undermining of the environment interest'.

Despite the difficulties of and resistance to comprehensive environmental management and planning reforms faced by those within the Department of Environment and Planning and the Labor Government, at the demise of that Government a partially completed environmental management and planning system had been formulated. It comprised one Act, two draft Bills and a vast range of proposals.

4.6.2 *Under the Liberal Government*

Bingham and Davies (pers. comms.) contended that the incoming Liberal Government was reluctant to continue with the reforms to planning and development legislation, and only after prolonged consultations did it review its position. According to Bingham and Davies the Government was primarily concerned with the possible negative consequences of the proposed regulatory reforms, particularly the phasing out of exemptions, upon future development and investment by industry. They cited a number of reasons that finally persuaded the Government to continue the reforms. Davies argued that the Government was able to be convinced that the proposed environmental management legislation would in fact encourage industry competitiveness and State economic growth. An example of these circumstances was to be found at Australian Newsprint Mills, Boyer, situated just outside Hobart. According to John Parsons (pers. comm. June 1995), Australian Newsprint Mills' Environmental Health Manager, the company had undertaken a multi-million dollar upgrade of its production processes, not in response to pending revised legislative regulations, but because its lack of competitiveness on the world market was threatening operational viability. Parsons noted that the company's competitiveness was suffering because of the loss of huge quantities of raw materials (particularly wood fibre) in waste discharged from the plant into the Derwent River; waste that was subsequently placing an intolerable burden on the river's assimilative capacities and creating the sludge rafts discussed in chapter two.

Bingham and Davies claimed that the Liberal Government also recognised the economic benefits of integrating what had previously been separate approval processes, thereby making the approval process easier to understand and more efficient to administer. This recognition was reinforced by the intense pressure from industry on the Government to proceed with an inclusive assessment process involving full and open public participation because it believed that although it could conform to all the Government's assessment process requirements, it could still lose the battle in the public domain. Bingham and Davies also said that some industries, for example, Pasminco Metals-EZ, had invested millions of dollars in pollution abatement in readiness for the phasing out of exemptions in 1994, and made it 'very plain' both politically and to the Department of Environment and Land Management that it would view a change in the rules concerning the phasing out of exemptions after such significant investment very unkindly. The prevailing attitude among these industries was that other industries should not be allowed to avoid making a similarly significant investment.

These circumstances left the Liberal Government with little option but to continue with the reforms, but its focus was decidedly on economic development and growth. This is nowhere more evident than in Premier Groom's address to Parliament when introducing the proposed System in 1993. His address focused almost exclusively on the proposed System as one of the 'central pillars for sustained economic development' within the State (Tasmania, House of Assembly 1993a: 2010-2012). He foresaw that the legislation would, probably more than any other single measure, restore business confidence and stimulate investment in the State. This outcome was expected as a consequence of the System's response to the need for public consultation and the reasonable rights of individuals and organisations to appeal development decisions, whilst also offering certainty and clarity for investors. He believed that the measures within the legislation would overcome the past weaknesses of a system that had caused continual frustration to developers faced with an excessive regulatory framework, significant bureaucratic inefficiency, and a lengthy planning approval process. Furthermore, the Premier asserted that the conservation movement, because of its particular biases, had taken full advantage of these weaknesses to obstruct development. By implication these obstructions would now be reduced or eliminated. This assertion, however, cannot be supported by fact. The previous Planning Appeal Board records show that it refused more appeals from developers than from community interest groups (Tasmania, House of Assembly 1993a: 2164).

The Liberal Government's economic focus was deeply embedded in the legislation. It was clearly evident in the pro-development membership of the respective administrative bodies created within the administrative framework, and it was equally evident in the degree of political control over these bodies. The pro-development orientation of the members of the administrative bodies created by the Liberal Government was severely criticised by Labor and Green Independent members of Parliament. These criticisms were in response to the provisions that eight of the ten members of the Sustainable Development Advisory Council and all five members of the Land Use Planning Review Panel constituted either political appointments, or representatives of local government, commerce and industry, all traditionally pro-development. Peter Patmore and Julian Amos (Labor Members of the House of Assembly), and Gerry Bates, Peg Putt and Christine Milne (Green Independent Members of the House of Assembly) argued that the bodies were skewed towards political and developmental interests, as well as being constituted by individuals who could benefit by the decisions of the individual bodies (Tasmania, House of Assembly 1993a: 2008, 2094-2096, 2106, 2109). Bates argued that the constitution of the bodies involved the 'privatisation of planning functions in the State which essentially ought to be in the public interest and not in the interest solely of private vested interests'

(Tasmania, House of Assembly 1993a: 2020). It involved, he said, the 'development of a structure that was a ministerial model, not an independent public service model'. The great problem with the ministerial model, according to Bates, was that public service officers had no vested interests to protect, whilst this could not be said of the proposed directors of the planning system. The Board of Environmental Management and Pollution Control did not generate these criticisms as it was constituted differently. It comprised five members of which two were the Director and Secretary of the Department of Environment and Land Management, whilst the remaining three members had to have practical knowledge and experience in different aspects of environmental management, needed not belong to or be nominated by any interest group or individual, and were appointed by the Governor. One of the five members had to be a woman.

In addition to the political influence exerted through appointments to the System's administrative bodies, the bodies were also under political control. In contrast to Labor's proposed politically independent administrative bodies, the Liberal Government's Sustainable Development Advisory Council, Land Use Planning Review Panel, and Board of Environmental Management and Pollution Control were placed under the direct control of the Minister. According to John Cleary, the Minister for Environment and Land Management, this control was instituted because the Liberal Government's philosophy of accountability made it more appropriate that Ministers responsible to Parliament should be responsible for planning decisions, and that it should be Parliament that was determining the State's future strategic direction (Tasmania, House of Assembly 1993a: 1997).

The extent of Ministerial control over these bodies, and the powers of the Minister in general, however, questions the validity of this explanation. According to Bates (Green Independent MHA), the legislation gave more power to the Minister and vested interests to control, direct, and manipulate the planning system than any other legislation in Australia (Tasmania, House of Assembly 1993a: 2020). Many examples could be highlighted. For example, draft State Policies could only be initiated when it was the opinion of the Minister that a matter of State significance required a State Policy. Furthermore, following the development of a draft State Policy and the Sustainable Development Advisory Council's report to the Minister on that policy, there was no obligation upon the Minister to accept that report when submitting the draft Policy for Parliament's approval.

Projects of State Significance also involved excessive political control and allowed political interference and corruption. A project could be declared of State significance by the Minister when it met two of eight criteria. These criteria were severely criticised as being almost meaningless, and as allowing the Minister at whim to submit a proposed development to a politically controlled approval process that denied public access to all appeal processes within the system. An integrated assessment of a Project of State Significance by the Sustainable Development Advisory Council was mandatory, but the assessment was under the direction of the Minister who could require the Advisory Council to comply with any requirements concerning the matters to be addressed or the processes to be followed in undertaking the assessment, as well as the time frame for the conclusion of the assessment. It was the responsibility of the Advisory Council to recommend to the Minister whether a project should or should not proceed, but the Minister was not obliged to follow these recommendations when suggesting to Parliament that a project of State significance proceed, or to the conditions under which it proceeded.

During Parliamentary debate, John Cleary, the Minister for Environment and Land Management denied accusations that the legislation allowed for extreme political control of Projects of State Significance and State Policies (Tasmania, House of Assembly 1993a: 2117-2119). He asserted that the provisions allowing for political control of the development-approval and policy processes were balanced by the obligation for public disclosure of all directives and recommendations between the Minister and the Sustainable Development Advisory Council. Furthermore, where the Minister's recommendations for development approvals to Parliament deviated from those of the Council's, they were to be accompanied by the legislative provisions on which those recommendations were based. In addition he asserted that all major decisions concerning Projects of State Significance and State Policy were safeguarded from political control because they required Parliament's scrutiny and approval.

The Liberal Government's intended use of political control to support its pro-development focus was also clearly apparent in its desire to restrict public participation in the development-approval process. In its initial draft legislation it proposed to allow only those persons with a *material interest* to participate in the development of State Policies and planning schemes, appeals against planning approvals, and hearings concerning the integrated assessment of projects of State significance. Furthermore, the right of public appeal against the declaration of a project of State significance or any matter arising during the completion of such a project, and any contravention of a planning scheme or breach of development permit conditions was completely denied. The Government was forced, however, to substantially amend these proposals in

response to the scathing criticism of such draconian measures it received in the public submissions it had requested in relation to the draft legislation (Davies pers. comm. July 1996). The criterion of material interest was replaced with the Labor Government's proposed criterion of *any person*. The denial of the right of public appeal for contravention of a planning scheme or breach of development permit conditions was amended to the right of persons with a *proper interest* (however that may be defined), but the denial of the right of public appeal over projects of State significance remained.

An issue which clearly detracted from the objectives of the System (Schedule 1) and which also signalled the narrow environmental intentions of the mainstream attitudes of both Labor and Liberal Governments, was the omission of the word 'ecologically' in relation to the concept of sustainable development. This omission was in direct contrast to The Federal Government's 1984 *National Conservation Strategy for Australia* (Australia 1984), Prime Minister Bob Hawke's 1989 statement on the environment in *Our Country Our Future* (Australia 1989), and the *Intergovernmental Agreement on the Environment* to which Tasmania was a party. South Australia's *Environment Protection Act 1993* (South Australia 1993 s. 6, 6a) and New South Wales' *Protection of the Environment Act 1991* (New South Wales s. 10, b) which require the protection, restoration and enhancement of the quality of the environment according to the principles of ecologically sustainable development further highlighted this discrepancy. Ecologically sustainable development was also adopted by the Commonwealth Government in 1989 in the lead-up to the preparation of the National Ecologically Sustainable Development Strategy designed to further the implementation of ESD principles across the broad range of federal and State government activities. Brunton et al. (1993: 15), a group of six barristers and senior lecturers in law from various Australian States, objected to this omission, outlining in their submission to the Liberal Government that the absence of the term 'ecologically' fundamentally undermined the focus of the concept. Whilst many of their recommendations were accepted, their proposal to reinstitute the term was not.

Despite the recognised cumulative impacts of between 3 000 and 4 000 development decisions made in accordance with planning schemes by local councils each year in Tasmania (Graham, Bingham, Davies and Hay pers. comms 1995.), there were limited obligations on councils to pursue the objectives of the System in relation to these decisions, particularly subdivision. Bingham (pers. comm. Nov. 1995) contended that this freedom resulted from legislation that was hurriedly developed and intended as a two year temporary measure, but which, it appeared, would remain far longer. He cited the problems of developing adequate legislation to address issues such as subdivision and urban infrastructure because of their highly political nature. In this

context he stated that in Tasmania 'all Members of the Legislative Council know people who want to subdivide, but few know anyone wanting to build a pulp mill'.

This explanation may be inaccurate. The explanation is more readily available in the Liberal Government's preoccupation with development. For example, the overarching objectives of the System, objectives recommended by the Legislative Council were absent from the *Local Government (Building and Miscellaneous Provisions) Act 1993*, the Act governing subdivision. In addition, the Act granted local councils the discretion to activate the environmental assessment provisions of the System when making development decisions concerning subdivision, despite the Government having claimed that subdivision would be treated identically with all other development proposals. The Government's recent hasty retreat from its decision to freeze further subdivision approvals, after outcry from the land development industry, further supports this contention. This issue is addressed in the assessment of the System in chapter nine.

Ultimately, the legislation⁶ establishing the System passed through the House of Assembly with little dissent from either the Labor Opposition or the Green Independents. The proposed mechanisms for the System received unanimous bipartisan approval, whilst most debate centred on the administrative framework which the Opposition attempted to amend without success. The legislation received bipartisan support for two reasons. The Labor Opposition and Green Independents considered that the proposed planning, environmental management and enforcement mechanisms were of far greater importance than the proposed administrative framework. Secondly, they perceived that the legislation had implemented 85 percent of the desired reforms and that the remaining 15 percent could be introduced in the future. The legislation received similar acceptance in the Legislative Council. Arguably, one of the reasons for this compliance was because the architects had gone to great pains to present the legislation in a suite of Acts, rather than as a single comprehensive Act such as *New Zealand's Resource Management Act 1991* which they felt would cause the Council more concern (Davies pers. comm. Mar. 1995). The culmination of these events was the previously unimagined and uninterrupted passage of the legislative reforms through Parliament.

It is also pertinent to highlight that, according to the many commentators already cited, the passage of the legislation through both Houses of Parliament was

⁶ The *State Policies and Projects Act 1993*, the *Land Use Planning and Approvals Act 1993*, the *Resource Management and Planning Appeal Tribunal Act 1993*, and numerous miscellaneous and regulatory Acts needed to establish the System.

achieved because the Liberal Government did not fully realise the obligations or constraints that the legislation would place on the State's future development and environmental management practices. Circumstances have supported this opinion. On two occasions, the construction of a tailings dam by Copper Mines of Tasmania, and the construction of the Heemskirk link road through a wilderness area in the north-west of the State, the Government introduced specific legislation to override provisions of the System, which enabled it to proceed with large and controversial developments. The executive branch's interference occurred despite John Cleary, the Minister for Environment and Land Management, stating in Parliament that 'in no circumstances can the Minister override or subvert the legislatively guaranteed minimum process' (Tasmania, House of Representatives 1993a: 2000).

4.7 Summary

4.7.1 *The Path of Reform*

The reform of environmental management and planning legislation in Tasmania began as a consequence of numerous factors. These included the political realisation of the economic importance of an efficient and conflict free development-approval process, and the depth of community feeling for responsible environmental management. It resulted in the State Labor Party's 1989 election promise to reform the State's planning and development legislation. In that election five Green Independents were installed in Tasmania's House of Representatives, and an Accord between the Labor Party and Green Independents was arranged, committing the Green Independents to support a minority Labor Government. The Accord committed the Labor Government to its reform agenda as well as to other specific issues of importance to the Labor Party and the Green Independents.

The Accord was a negotiated agreement between historically pro-and anti-development adversaries, and heralded the beginning of a period of negotiation between those with development and conservation interests aimed at resolving the protracted and often ascerbic disputes over management of the State's environment. The *Salamanca Agreement* was the first commitment to emerge from this sentiment of negotiation. It formalised an agreement between developers and conservationists for the short term logging of State Forests, whilst committing all parties to negotiate a long term strategy - the *Forests and Forest Industry Strategy*.

The negotiations foundered when those with forestry interests introduced issues that breached the Accord agreement, and the Accord was itself abandoned by the

Green Independents when Cabinet accepted the Strategy. The Government was subsequently defeated in a vote of no-confidence moved by the Green Independents after Parliament passed the Strategy. Some commentators perceived the dissolution of the Accord as the incompatibility of opposing principles, whilst to others it highlighted the need for more comprehensive avenues of dispute resolution to resolve the fundamental differences inherent in environmental issues. Evidence supports the conclusion, however, that Labor's determination to proceed with a pro-development policy, irrespective of the consequences, was the fundamental issue.

Labor began its planning and development reforms upon entering government with a fundamental departmental restructuring that established new agencies and gathered existing dispersed agencies under a single department to enable the formulation of new environmental management and planning legislation. The restructuring was completed in July 1989 amidst opposition from resource agencies, particularly the Forestry Commission, to the responsibility for environmental management being centred in the Department of Environment and Planning. Departmental restructuring was followed by concurrent reviews of planning, environmental management, and appeal processes, as a precursor to legislative reform. The objectives of the reform were outlined as the need to establish a decision-making process that provided developers with a clear outline of their responsibilities, ensured 'speedy' results, facilitated public involvement, integrated environmental issues at a grass-roots level, minimised the duplication of State and local government roles, and strengthened the State's role in co-ordinated statewide planning.

Planning reforms were to establish new structures for land use planning and formulating planning schemes, and the revision of issues concerning public land use decision-making, regional planning, subdivision control and development-approval processes. The Government's immediate intentions were disclosed when its first draft planning Bill (draft *Planning Bill 1991*, draft No. 6) was released for public response. It proposed a structure for a general land use planning system consisting of a State planning commission responsible for planning schemes and State planning policies. In contrast to existing provisions it proposed unqualified public participation in the development of planning schemes. The draft Bill involved very little consultation with parties involved in the planning process, and was narrowly focused to the exclusion of any environmental or integrated development-approval considerations.

The event which arguably provided the most significant influence upon the reform process was the Legislative Council's assumption of the Government's review of

the public land use decision-making process. The review was undertaken by a Legislative Council Select Committee of Investigation because of the Council's concern over the continuing conflict in developing State forests. The Committee's recommendations framed the final legislation for public land use decision-making, the *Public Land (Forests and Administration) Act 1991*. The significance of the recommendations lay in the proposal that the concept of sustainable development be inserted into public land management legislation. This suggestion was enthusiastically accepted by the architects of the system who developed a set of objectives that became not only the statutory objectives for public land management, but as Schedule 1, the governing objectives for the System in its entirety. No less important, however, was the incorporation of the Committee's recommendations within the proposed legislation a factor in it passing reasonably unamended through the Legislative Council, historically a barrier to reform, especially on matters concerning the environment.

The review of environmental management legislation, in contrast to the limited review of planning, involved a comprehensive process of consultation with all parties concerned with environmental management issues. The review began by consulting members of industry and commerce, State Government agencies, local government and the conservation movement for their assessment of the strengths and weaknesses of the existing *Environment Protection Act 1973*, and their needs in relation to new legislation. Industrialists were concerned that the focus of reform was restricted to planning issues, and that the Government was failing to reduce the multiplicity of approval processes that currently existed. It informed the Government that it required an approval process that clearly defined industry's responsibilities, and included all relevant factors, especially public participation, within the approval process. The Executive Director of the Australian Manufacturing Council, however, refuted the overall need for reforms. He outlined the obstacles being experienced by members of the mining and industry sectors, and in apparent contradiction of the Council's formal position, argued that Australians were not in the economic position to implement world class environmental strategies. He perceived that the existing environmental problems associated with mining and industry were largely the result of public acceptance of the biased rhetoric of the conservation movement.

The legal profession's contribution to proposed reforms was that the laws governing environmental management needed greater clarity, to exclude political interference, and to provide greater community access to an environmental management appeal process where costs were recognised and accounted for. Members of the union movement perceived the need for new legislation, enabling sensible environmental debate consisting of open and honest consultation between all parties, in an effort to

encourage economic growth. This approach was supported by the widespread belief in the need for an adequate dispute resolution system.

Similar issues were raised by representatives from State Government agencies who expressed the need for a single development-approval process to replace the plurality of existing processes, and a single pollution control Act in contrast to the current proliferation of Acts. A focus on ambient quality instead of end-of-the-pipe pollution concentrations was seen as essential, as was an improved enforcement system and appropriate resourcing of State and local government authorities. A separate approval process for major projects was deemed necessary, as the confusion surrounding the decision-making process for these projects was potentially affecting State development and growth. State Government representatives also expressed the need for a certainty of process and the incorporation of relevant factors, such as guaranteed public participation, in the approval process.

Following these consultations, and after careful consideration of the current national and international concepts, initiatives and legislation for environmental management, the Government released the *Review of the Environment Protection Act: Issues for Public Discussion*. In the paper it was proposed that environmental management legislation contain an explicit purpose that reflected the principles of ecologically sustainable development, and that environmental management and planning be integrated through the use of environmental impact assessment. It was also proposed that there be a range of pollution control mechanisms including the use of incentives rather than command and control mechanisms, ambient environmental rather than point source pollution monitoring, and that the System include State environmental policies. State of the environment reporting was emphasised as imperative to future environmental management to provide the necessary information for developing State environmental policies. The proposed means for enforcing the legislation were substantially strengthened and included civil enforcement provisions and severe penalties for environmental vandalism.

At this point in the evolution of the System's facility for appeals and enforcement, it was envisaged that a dispute resolution system consisting of a consolidated appeal tribunal would provide the civil enforcement facility, as well as an avenue of appeal for any person against decisions made by the system's administrative body. The proposed dispute resolution system was designed to be relevant to issues of public interest and incorporated features such as informal and non-adversarial procedures, merit based decisions and low-cost operation.

In a summary of public responses to the reform proposals presented in this paper, the Labor Government claimed general support. The public did, however, question the need for separate State policies governing planning and environmental management rather than a single integrated policy entity.

The next discussion paper released by the Labor Government, the *Reform of Environmental and Planning Legislation: Overall Strategies*, was a synthesis of the previously released papers and their public response. In the paper it was revealed that the Government was now contemplating an environmental management and planning system that reflected the evolving global perception of the fundamental relationship between society and the environment. The proposed system was now perceived as pivotal in determining the State's future both socially and economically. The broadening of perspective was undoubtedly the result of the Federal Government's involvement in international environmental conventions that had resulted in national initiatives in which Tasmania had played a developmental role. The paper clearly marked a turning point in the Government's vision of a new system

The integration of all aspects of environmental management and planning was now fundamental to encouraging the desired goal of ecologically sustainable development. The concept of an integrated development-approval process consisting of environmental assessment for all types of activities on land was envisaged as central to this goal. Emphasis was now placed on the need for a system which provided the means for efficiency and accountability. Guaranteed public participation, clarity of State and local government roles within the system, a streamlined decision-making process which provided developers with a clear understanding of their responsibilities in that process, and unified laws governing environment protection were identified as fundamental to achieving efficiency and accountability. The existing system had not provided a Statewide perspective with the capacity for generating co-ordinated policy and this was blamed for the current land degradation and water and atmospheric contamination. It was intended that the new system would rectify this failure by providing the capacity for strategic and environmentally sensitive planning through State planning policies.

The future philosophy, and standards and regulations, governing pollution control had received scant attention in the discussion and information papers released by the Labor Government, and industrialists were understandably apprehensive about their future responsibilities under the new system. In the *Review of the Environment Protection Act 1973: Future Directions for Regulations and Standards* the Government clarified these issues. It would introduce an emphasis on clean technology and waste

minimisation, whilst approaching regulations as 'temporary resting places on the road to a goal of zero discharge' (Department of Environment and Land Management 1991i: 2). The goal would, however, be long-term, and primarily relevant to persistent bio-accumulative toxicants. In contrast to Tasmanian governments' past unabashed compliance with industrialists demands for pollution permits, this emphasis was unprecedented.

The mechanisms for pollution control proposed for the new system were vastly different from the existing mechanisms. Rather than focusing exclusively on point-source discharges, the new system would focus on the assimilative capacity of the ambient environment. It was expected that Tasmania would be obliged to conform with national environmental standards, but pollution control would also be implemented through the concept of environmental quality objectives which were proposed as the quality objectives for classified environmental zones and uses. The quality objectives and zone and use classifications would be laid down within environmental management and planning policies, and the objectives would be achieved through negotiated licence conditions and management plans with industrialists - the details of which would be available to the public. Environmental management and planning policies, now proposed as an integrated policy entity rather than as individual and separate entities, were considered central to the new system. In conjunction with state of the environment reports they would provide the common enforcement instrument through mechanisms such as planning schemes, and through their recommendations for the direction of future management of the State's environment, including the management of zones and uses in order to achieve their desired quality objectives.

The evolution of the concept of an environmental management and planning system reached its final phase under the Labor Government with the release of the Government's last discussion paper, the *Environmental Management and Planning Legislation: Overview*. The Government asserted that the public response to the previously released draft *Planning Bill 1991*, and information and discussion papers, had resulted in the reassessment of its original aim and objectives of reform. The aim was now to provide the 'structures and processes to enable the State to achieve the ecologically sustainable development of its land and other resources'. The newly formulated objectives were to establish an integrated environmental management and planning system with enhanced environmental assessment in planning and development control, a stronger coordinated State role in setting Statewide objectives, a simplified development-approval process, and improved public participation.

The discussion paper presented a schematic outline of the legislative components of the proposed integrated environmental management and planning system (see Figure 4.1, pp. 125), and was accompanied by two draft Bills. The *Draft Environmental Management and Planning Commission Bill 1991* fulfilled the overarching umbrella component, whilst the *Draft Planning Bill 1991* (final draft) fulfilled the planning component. The *Environmental Management and Planning Commission Bill 1991* was to establish the system's peak administrative body - the environmental management and planning commission, potentially enshrining the system's overall objectives of sustainable development (Schedule 1) within legislation, and introduced State environmental management and planning policies and state of the environment reporting. The *Draft Planning Bill 1991* (final draft) introduced a list of subsidiary planning objectives in addition to the System's overall objectives, and established the development of planning schemes, the provisions for the enforcement of planning controls, and the range of development agreements available to local governments.

Although significantly amending the System's administration, the Liberal Government retained its overarching objectives, framework, processes and mechanisms. In this respect the Liberal Government adopted all the components of the Labor Government's integrated environmental management and planning system except for those dealing with regional planning, and subdivision and infrastructure. These remained unaddressed in the Liberal Government's Resource Management and Planning System. Although the components were partially rearranged, they retained all the environmental management and planning mechanisms proposed in the draft bills and information and discussion papers. The overarching umbrella legislation of the Liberal Government's Resource Management and Planning System, the *State Policies and Projects Act 1993*, contained the overall objectives for the system, State Policies and state of the environment reporting, and to this was added Projects of State Significance. The planning component, the *Land Use Planning and Approvals Act 1993* retained the subsidiary planning objectives and the planning control mechanisms appearing in the *Draft Planning Bill 1991*. The *Resource Management and Planning Appeal Tribunal Act 1993* established the consolidated appeal and enforcement system which consisted of a comprehensive dispute resolution process that guaranteed third party appeal rights and granted a civil enforcement capacity administered by the Resource Management and Planning Appeal Tribunal. The environmental management component was established with the *Environmental Management and Pollution Control Act 1994*. It contained the majority of environmental management and enforcement provisions proposed by the Labor Government, including the principles of Environmental Impact Assessment.

The Liberal Government's amendments to the Labor Government's proposed administration entailed a shift from an independent to a politically based decision-making process. Whereas the Labor Government had contemplated one independent peak body (the environmental management and planning commission) to administer all components (except for appeals and enforcement) of the system, the Liberal Government chose to administer each component, that is, the overarching (umbrella) legislation, planning, and environmental management with a separate administrative body. The administrative bodies were not independent of the political process. The majority of the members were political nominations with a pro-development orientation. Despite vigorous Parliamentary debate over this issue the Government refused any amendments. The functioning of the bodies was also made subject to the written direction of the Minister. The Liberal Government's response to the criticism of politicising the decision-making process was that it was appropriate that Ministerial accountability existed for all decisions made in relation to the direction of State development. Furthermore, the Minister argued that the System was insulated against political interference due to the legal requirement that all political directives and decisions, and all recommendations from administrative bodies to the Minister, be made public.

4.7.2 *The Political Backdrop*

The Labor Government's election promise for the reform of planning and development legislation to implement sound environmental management practices dissipated in part under the political considerations to align the reforms to an economic agenda that included the needs of industry. This dissipation relegated the reform of environmental management to a secondary consideration within the reform process. The political impediment to environmental management reform was compounded by an initial absence of national policies with which to align the reforms, as well as opposition from resource departments within the Government pursuing opposing agendas, and an antagonistic conservation movement. Nonetheless, there were those in the Labor Government and State bureaucracy sympathetic to genuine environmental management reforms. They persevered with the agenda and, through a carefully engineered process of policy construction in accordance with the results of broad consultation with all parties to the environmental debate, had formulated a package of meaningful reforms at the fall of the Labor Government.

The incoming Liberal Government was initially reluctant to proceed with the reforms, concerned with their possible negative impact on the State's economic growth and development. After many months of persuasion the Government reviewed its

position. This shift was due to the System's architects arguing that the reforms would benefit State economic growth and development, and after approaches from industry representatives, some whom had continued to demand an improved development-approval process and others who were hostile after having invested millions of dollars in pollution abatement in readiness for the phasing out of Ministerial exemptions. The Liberal Government accepted the proposed environmental management mechanisms it had inherited from the Labor Government, largely because they had been developed in conjunction with industry through a broad public consultation process. However, the Liberal Government's predominantly economic approach was reflected in the degree of political control it engineered over the System's decision-making process. Although there was wide-spread dissatisfaction in Parliament with the politicising of the decision-making process, the legislation establishing the Resource Management and Planning System received bipartisan political support. This support was forthcoming primarily because both the Labor Party and the Green Independents agreed that legislating the environmental management mechanisms was of greater importance than the administrative framework.

4.8 Conclusions

In terms of concept and vision, Tasmania's statutory approach to environment and development between 1989 and 1994 altered dramatically. During this period, the weak, poorly implemented and poorly enforced environment protection and planning legislation implicated in the environmental degradation and social and political conflict that had shadowed the previous twenty years, was replaced by legislation designed to usher in ecologically sustainable development.

The contrasting statutory concepts and vision prior to and following 1989 could barely have been greater. Before 1989, development and the environment were seen as separate issues. Development was given far greater importance than environmental quality. Development proceeded despite its often detrimental environmental and social consequences. The new legislation stood diametrically opposed to this position. Development was not to be separated from its environmental and social consequences. This contrast was vividly manifest in the objectives governing the two approaches. The old legislation merely required a focus on protecting Tasmania's environment by controlling or preventing emissions likely to cause pollution. The new legislation required strict adherence to a set of objectives that were in effect principles of sustainable development as defined by the United Nations Commission on Environment and Development (in the Brundtland Report), and

internationally sanctioned by the United Nations Conference on Environment and Development (the Earth Summit).

Corresponding with the contrasting objectives of these two quite separate legislative eras were the vastly different policies adopted for implementing those objectives. The old legislation was devoid of policies to integrate environmental management and planning; to comprehensively assess the environmental and social impacts of development; to guarantee public participation in policy, planning and management; to provide effective appeal and enforcement; and to bring transparency and accountability to government's development decision-making. Conversely, the new legislative structure did include such policies, some being themselves principles of sustainable development, which in turn were supported by statutory mechanisms, instruments and processes which the System's architects' considered necessary for implementing those policies.

It is important to recognise the evolution of the fundamental change in approach to the process of reform: a change which was central to the nature of the final legislation. The approach to reforming the planning legislation began without public consultation, and with a focus on improving the development of planning schemes as one means of removing the major obstacles faced by developers along the development-approval pathway. It was, not surprisingly, poorly received. The later approach, which emerged with the review of the environment protection and appeals and enforcement legislation was, however, vastly different. It began, and continued until the Labor Government was replaced by a Liberal Government in 1992, but by which time the draft legislation for the System had been substantially completed, with the State government officers responsible for these aspects of the reform entering into consultation with those stakeholders wishing to be part of the reform process. As is evidenced above, and discussed in chapter nine, this approach significantly altered the direction and the outcome of the reform process. The fundamental change in direction was manifest in the increasing degree of integration of environment and development within the System. Corresponding with this increase in integration was a shift in focus from the economic benefits of reform alone to attempting to establish a statutory system designed to achieve sustainable development.

In chapter five I explain the operation of the suite of legislation. This is presented in terms of the integration of environment and development provided by its objectives and supporting policies.

Chapter Five

The New Resource Management and Planning System

5.1 Chapter Outline

The architects of the Resource Management and Planning System recognised that processes designed to integrate development and the environment were fundamental to achieving sustainable outcomes. They sought to achieve such integration by enshrining in legislation specific objectives and policies. The objectives broadly involved managing the use, development and protection of natural and physical resources in a way, or at a rate, which enabled people and communities, both present and future, to provide for their social, economic and cultural well-being and their health and safety. The policies underpinning these objectives included: integrating environmental management and planning; guaranteeing public participation in those processes; assessing the immediate environmental and social consequences of development proposals, as well as the environmental trends from cumulative development impacts; providing avenues for efficient appeal and enforcement of decisions made under the legislation; and requiring transparent and accountable development decision-making by government.

The System's architects recognised that these policies would need to comprehensively link the four fundamental areas for regulating development and the environment, that is: land use planning; development control; environmental management and pollution control; and appeals and enforcement of the legislation, and of the decisions emerging from its implementation. Only by combining these areas could the System's objectives be effectively applied across the decision-making process. The areas were to be combined via a diverse range of mechanisms, instruments and processes. The following explanation of the new System is undertaken in terms of the operation of these measures within the four areas of regulation.

5.2 The System's Major Functions

The successful execution of resource management and planning policies was to be accomplished in the bureaucracy by measures designed to facilitate comprehensive policy creation, major project assessment, state of the environment reporting, land use

planning, development control, environmental management and pollution control, public land allocation, and consolidated appeals and enforcement processes. The facilities for policy creation, major project assessment, state of the environment reporting, land use planning and public land allocation were each provided by one of the System's five major Acts. It will be recalled that these Acts are the *State Policies and Projects Act 1993*, the *Land Use Planning and Approvals Act 1993*, the *Resource Management and Planning Appeal Tribunal Act 1993*, the *Environmental Management and Pollution Control Act 1994* and the *Public Land (Administration and Forests) Act 1991*. Development control, environmental management and pollution control, and appeals and enforcement were provided by the interplay of two or more of the Acts. Supplementing these Acts, and providing the provisions incumbent upon local government for the subdivision of land, an activity interpreted by the new System as development, was the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

The System's framework, schematically represented in Figure 4.2 (pp. 123), shows the five major Acts, and their specific facilities. The System's objectives (defined in Schedule 1 [see chapter 4, pp. 41-42]), and the mechanisms for creating State policies, classifying and assessing major projects, and undertaking state of the environment reports were established in the System's core legislation, the *State Policies and Projects Act 1993* (Tasmania 1993a). The Act also established the System's chief administrative body, the Sustainable Development Advisory Council (Advisory Council). The objectives, as outlined in chapter four, were based on the principles of sustainable development. These objectives were to be reflected in all development decisions, especially those made by the Crown. It is important to note that although the development-approval processes for activities such as forestry, mining exploration, and marine farming were governed by legislation specific to those activities and therefore not subject to the provisions of the System, decisions made in relation to these development activities were to further the objectives of the System (Tasmania 1993a, s. 4).

The progressive institution of Sustainable Development Policies (State Policies) was envisaged as increasingly determining the direction of resource management in Tasmania. Until these policies were instituted, however, a policy vacuum would exist. Draft State Policies were to be initiated and prepared by a relevant portfolio Minister, with the Advisory Council responsible for administering a statutory process of public consultation concerning the draft Policy before returning its recommendations to the Minister. In the consultation process due consideration was to be given to all relevant economic, environmental, ecological, social and cultural issues

concerning the draft Policy. It was a statutory requirement for the Council's recommendations to the Minister to be made public, and for the final form of the draft Policy, as decided by the Minister, to be passed by Parliament before becoming law. During the four years since the System's introduction in 1993, Parliament has passed the State Coastal Policy and the State Policy on Water Quality Management, whilst a draft Policy on rural land management is partially prepared, and a draft Policy on roads has been shelved. Although these policies have concentrated on the direct impacts of development on the environment, the policy framework enables its administrators to address much broader economic and social issues as these may arise in the future.

One of the major guiding influences on State Policies was expected, in time, to be state of the environment reporting - the first State of the environment report was completed in December 1997 (Sustainable Development Advisory Council 1996a; Sustainable Development Advisory Council 1997). This mechanism obliged the Advisory Council to monitor and report on the condition of Tasmania's environment every five years, and to recommend future actions for the management of the State's environment. It was intended that these recommendations would be fed back into the System through State Policies which would influence all subsequent resource management decision-making (Tasmania, House of Assembly 1993a: 2001). State of the environment reports can therefore be considered strategic planning tools. The Advisory Council was obliged to publicly release the Report, including its recommendations for the future management of the State's environment. The intention was to enhance the System's commitment to accountability and transparency of government by revealing the environmental consequences of governments' past developmental decisions, and to allow the public to assess whether those recommendations for future environmental management were implemented.

The final mechanism of this central piece of legislation was for dealing with projects of State significance. The Minister could declare a project of State significance if it fulfilled two of eight criteria. These included a significant: i) capital investment; ii) contribution to the State's economic development or Australia's balance of payments; iii) economic or environmental impact; iv) infrastructure requirement; or v) complex technical process or engineering design. Projects so declared were expected to include pulp and paper mills, major mining operations, and tourism development within World Heritage Areas. Parliamentary approval was needed for the declaration of a project as significant to the State, and for the guidelines for its assessment by the Advisory Council. The Advisory Council was obliged to undertake an integrated assessment of the development proposal, recommend to the Minister whether or not the project should proceed and, if so, under what conditions. The integrated assessment was to enable

public representation, whilst the Advisory Council's recommendations to the Minister, based on the results of the integrated assessment, were to be made public to allow for accountability and transparency within the political process. If the Minister's recommendation to Parliament was that a project proceed, or if the conditions under which it should proceed differed from those of the Advisory Council, then the Minister was to specify the statutes relevant to his/her recommendations.

5.2.1 *Land Use Planning*

Land use planning decisions were first and foremost governed by the System's overarching objectives which appeared as Schedule 1 (Part 1) in the System's five major Acts. They were also to be governed by State policies because of their role as the avenue through which those policies were to be implemented. Land use planning was to occur in accordance with the *Land Use Planning and Approvals Act 1993* which established, in addition to the System's overarching objectives, a supplementary agenda of objectives (Schedule 1, Part 2) to be pursued in all planning decisions. These objectives included requirements for courses of action: to implement sound strategic planning by State and local government; to establish a system of planning instruments for setting objectives and policies for developing, protecting and using land; to ensure the explicit consideration of the social and economic effects of development; to conserve places of aesthetic, architectural and historic interest; and to enable the orderly provision and co-ordination of public utilities.

The *Land Use Planning and Approvals Act 1993* required the development and regular revision of planning schemes by local governments. Draft planning schemes were to be developed via a process of public consultation, and within a specified time frame, for approval by the Land Use Planning Review Panel (Review Panel) established under the Act. The process of public consultation included the right to appear before the Review Panel concerning any provisions in a draft planning scheme proposed by local government. Planning schemes were to be the instruments providing for the use, development, protection, or conservation of any land in the area to which they related. This jurisdiction was extended by the *Marine (Consequential Amendments) Act 1997* to include the marine environment within three nautical miles of the coast, but excluding those areas under the jurisdiction of the State's port management authorities, and marine farming zones and marine resource protected areas under the jurisdiction of the Department of Primary Industries and Fisheries (Tasmania 1997c s. 3). Planning scheme provisions were to be instituted through land use zoning, where development within each zone was governed by specific criteria. It was not mandatory that planning schemes were developed from or with the intention of creating

a regional planning document, but planning schemes were required to produce regional consistency as far as was practicable. Planning schemes were intended to facilitate the changing needs of development, and the Act included provisions for their amendment, the facilitation of interim land use controls during their development or amendment, and the granting of dispensations from interim orders. Local governments' proposals for such amendments, as with its proposed planning scheme provisions, could be appealed to the Review Panel.

There were numerous jurisdictional exemptions from planning schemes. These consisted of public land (primarily State Forests), land declared as private timber reserves under the *Forest Practices Act 1985*, mineral exploration in accordance with an exploration licence under the *Mining Act 1929*, and the marine environment. As is outlined above, however, the jurisdiction of planning schemes has recently been increased to include areas of the marine environment.

Although State Forests were exempt from the jurisdiction of planning schemes, they were to be administered within the Resource Management and Planning System under the *Public Lands (Forest and Administration) Act 1991*. The Act established the Public Land Use Commission, an independent body responsible for advising State Government on how best to achieve a balanced use of Public Land in the long-term best interests of the State. As a land use planning body within the Resource Management and Planning System, the Commission's recommendations were obliged to promote the System's overarching objectives. Its recommendations were also meant to reflect a thorough evaluation of the potential for public land to fulfil social, economic and environmental needs. This evaluation was to be achieved by identifying the nature and extent of public land resources, the environmental, cultural, social, industrial and economic values of those resources, and the uses for each resource. The Commission's recommendations were to be based on the consideration of the full costs and benefits of each use or combination of uses for those resources. The provisions of the Act required the Commission to encourage public involvement in the recommendation process and to promote the sharing of information and responsibility for land use recommendations.

5.2.2 *Development Control*

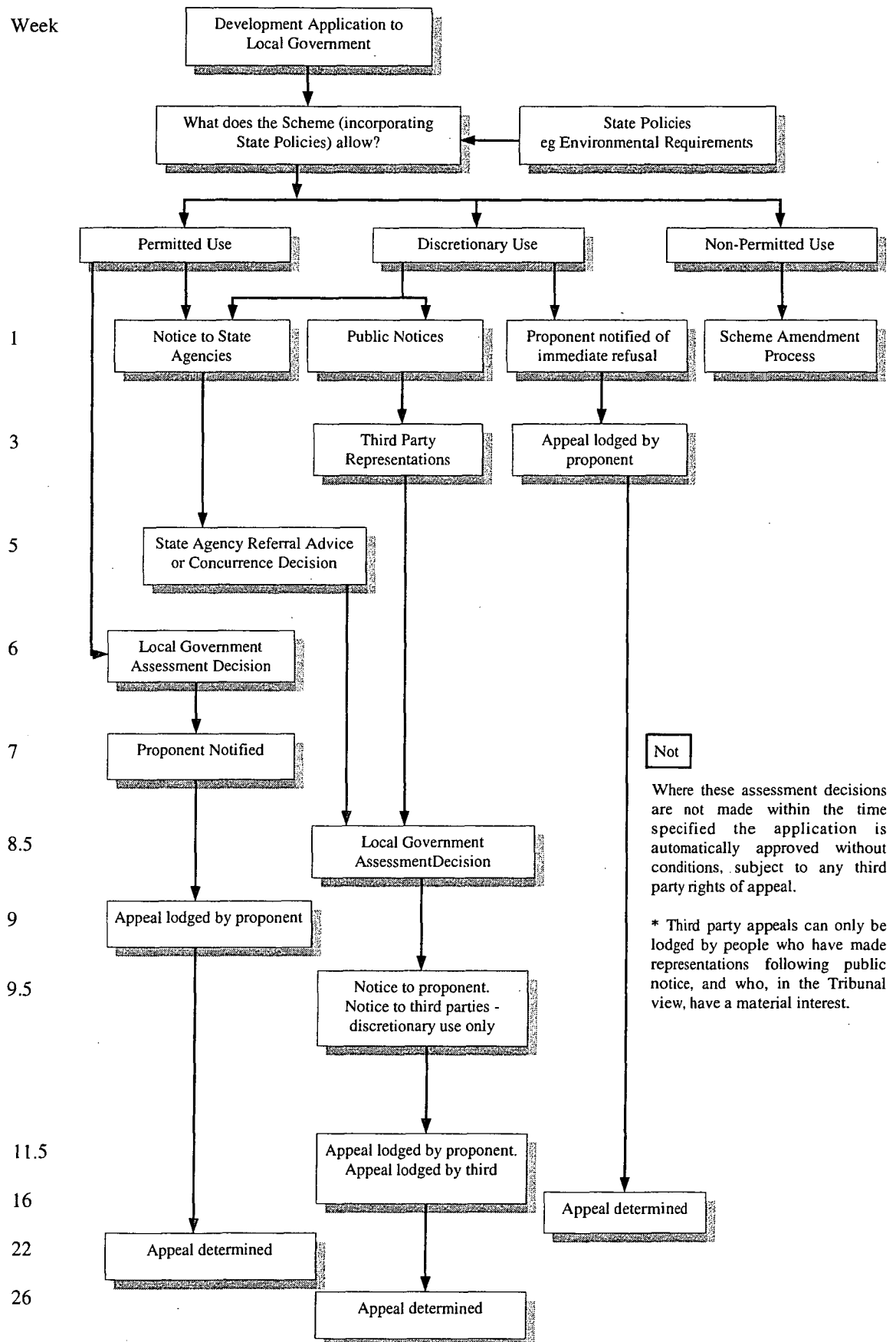
Development control, a fundamental function of the System, was to be executed through land use planning and environmental management processes. The development control process constituted the System's single integrated development-approval process, and it was addressed through the integration of four of the System's five major Acts. It was a hierarchical procedure exercised through local governments'

administration of planning schemes in accordance with the three levels of 'permissible activity' stipulated in the *Environmental Management and Pollution Control Act 1994*. Permissible Level 1 activities were those which had the potential to cause environmental harm and which under the *Land Use Planning and Approvals Act 1993* required planning permits. These activities included light industry, the storage and warehousing of chemicals, and the operation of extractive or food production industries. Level 2 activities were activities of a specific nature, such as oil refining or cement manufacture, or permissible Level 1 activities which because of the large volumes of, for example, chemicals manufactured or used in processing, or mineral ores mined or processed, were classified as environmentally significant. They appeared in Schedule 2 of the *Environmental Management and Pollution Control Act 1994*. Level 3 activities were those classified under the *State Policies and Projects Act 1993* as projects of State significance, and they were subject to Parliamentary approval.

Local government was responsible for approving all land use applications excepting for Level 3 activities. The approval process was governed by the *Land Use Planning and Approvals Act 1993*. Under this Act, and according to the zoning and the criteria applying to each zone within a particular planning scheme, proposed land use fell under the categories of land use permitted as of right due to it not requiring a planning permit, land use permitted with or without attached conditions, land use that local government had the discretion to refuse or approve, and prohibited land use. According to these classifications the occupation of an existing house which conformed to health regulations was permitted as of right. The construction of a residential building within a residential zone, or a timber mill within a medium industry zone was permitted in accordance with any attached conditions, but the construction of a residential building was prohibited in a medium industry zone, as was a timber mill in a residential zone. Under the *Local Government (Building and Miscellaneous Provisions) Act 1993* the subdivision of land was a discretionary land use. Caravan parks, restaurants, agriculture, animal sale yards and guest houses were mostly discretionary land uses depending on their location (Tasmania 1993e s. 8.2). All Level 2 developments were to be treated by local government as discretionary land uses.

The development control-approval process relevant to local government appears in Figure 5.1. Development proposals submitted to local government were to be assessed in accordance with the local planning scheme, as permitted, discretionary or prohibited land uses. Proposals conforming to permitted land uses were to be granted a permit that, based on an assessment for their potential to cause environmental harm, which may have included consultation with State Government agencies, may have included attached conditions.

Figure 5.1 Local Government Development Approval Process (Source: Department of Environment and Land Management 1993).



This decision-making process, however, included no facility for third party representation or appeal, and depended on local government's expertise and assessment for sustainable outcomes. The System did allow, however, an appeal to the Appeal Tribunal based on non-compliance with the System's objectives. As Figure 5.1 shows, the contingencies of this decision-making process were governed by time limits.

Proposed developments involving land uses which local government had the discretion to refuse or grant (and except for one significant difference this included proposals for Level 2 developments) required a substantially different approval process. Local government was first to assess the proposal for its potential to cause environmental harm. This included the option, but for Level 2 developments both courses of action were mandatory, to forward the proposal to the Board of Environmental Management and Pollution Control (Board), established under the *Environmental Management and Pollution Control Act 1994*, for environmental assessment, or to consult with relevant State Government agencies, or both. Concurrent with these procedures was the exhibition of the development proposal for public scrutiny and representation. Local government's decision to grant or refuse a permit for the proposal must have upheld all recommendations by the Board, and taken into consideration all public representations to the proposal. The proponents of the proposed development or those having made representations to local government or both could appeal its decision to the Appeal Tribunal established by the *Resource Management and Planning Appeal Tribunal Act 1993*.

Development control was further reinforced by the facility for local government to enter into legally binding agreements with developers. These agreements undertaken with land owners were to prohibit, restrict or regulate the use or development of land, the conditions under which development was to proceed, or for any matter intended to advance the objectives of the legislation or any State Policy. They were to take the form of financial bonds or guarantees from the land owner that were partly or fully forfeited upon failure to carry out the agreement to the satisfaction of local government.

Level 3 activities were those activities of State significance where responsibility for development control ultimately lay with State Parliament. Although the mandatory integrated assessment undertaken by the Advisory Council for such projects was to include the consideration of public submissions, there was no recourse to appeal by the public over either the Minister's proclamation of the proposed development as a project of State significance, the Advisory Council's recommendations

to the Minister, or the Minister's proposals placed before Parliament for the conditions under which the project could proceed.

5.2.3 *Environmental Management and Pollution Control*

The essence of integrating resource management and planning is to execute development control in response to the changing quality and needs of the environment. In Tasmania's System, land use planning and development was in large part designed to respond to the fluctuating state of the environment. The framework for this process was contained in the System's overarching legislation, the *State Policies and Projects Act 1993*. The Act established the System's objectives (Schedule 1), and required that all environmental management and pollution control decisions promoted those objectives. The objectives were also to be operationalised and implemented through State policies established within the Act. One of the mechanisms intended to define the operationalisation of these policies was the five yearly state of the environment report undertaken to assess the changing quality of the environment in Tasmania as a result of ongoing development decisions. It was proposed that this circularity would provide an effective mechanism for altering environmental management policy in response to the environmental repercussions of past development decisions, or to emerging environmental issues (Tasmania, House of Assembly 1993a: 2001). This proposed role for state of the environment reports, although not a statutory obligation, was one of the potential strengths of its configuration: that it was not only an environmental assessment tool, but that its authors must also provide recommendations which could be absorbed into policies informing the future management of Tasmania's environment.

The legislation supporting environmental management and pollution control was the *Environmental Management and Pollution Control Act 1994*. All decisions made under the Act were to promote the overall objectives of the System and the prescriptions of Sustainable Development Policy, and to observe the supplementary objectives specific to the Act (Schedule 1, Part 2). These included the promotion of pollution prevention, clean production technology, reuse and recycling of materials, and waste minimisation programmes. The supplementary objectives also focused on the equitable allocation of the costs of environmental protection and restoration, especially the requirement that polluters bore the appropriate costs of their activities, and the adoption of a precautionary approach when assessing the environmental risks of development. The Act's ultimate aim was to control all activities within the ambit of the System's legislation that might lead to environmental harm, defined in the Act as any adverse effect on the environment including land, air, water, organic and inorganic

matter, living organisms, human-made or modified structures, and areas and interacting natural ecosystems (Tasmania 1994 s. 5).

The mechanisms providing for environmental management and pollution control were multi-faceted and largely integrated into planning and development control through assessment of the three 'permissible levels' of development outlined in the previous section. In this context local government officers were responsible for adequately assessing all proposed activities broadly encompassing Level 1 activities, and for issuing, or refusing planning permits reflecting that assessment. Assessment of these proposals could include analysis of the key environmental issues in terms of risk and potential consequences to the environment, and whether management regimes or restrictions needed to be applied to ensure satisfactory environmental outcomes in relation to environmental targets and performance standards. As is highlighted in Section 5.3.2, however, local government's assessment of a development proposal for a Level 1 activity, which according to a planning scheme was classified as 'permitted', was dependent upon its officers' perceptions of the potential for the proposed development to create environmental harm, whilst there was no avenue for public appeal: a situation plainly unacceptable, and viewed inside local government as such (Mackie & McMullen pers. comms. Feb. 1998). Local government staff could also rely upon environmental agreements to assist them to prohibit, restrict, or regulate activities to achieve desired environmental management objectives.

Assessment of Level 2 activities by the Board was to prevent and control pollution and to co-ordinate environmental management activities. Assessment of Level 2 proposals, in addition to reflecting the System's objectives and the prescriptions of State Policy, was to be undertaken in accordance with the Environmental Impact Assessment Principles established in the *Environmental Management and Pollution Control Act 1994* (Tasmania 1994, ss. 73-74). These principles were consistent with the *Intergovernmental Agreement on the Environment* negotiated between the Federal and State Governments as a means to providing an accredited process that would avoid future conflict, such as occurred over Wesley Vale, between the two spheres of government.

In conducting the assessment, the Board was firstly to decide whether a proposed activity had the potential to result in 'serious' or 'material' environmental harm (Tasmania 1994, s. 25.4). Serious environmental harm was defined as any adverse effect on the health or safety of human beings or the environment that was of a high impact or wide scale, or the loss or damage to property in excess of \$50 000. Material

environmental harm was defined as an environmental nuisance of a high impact or on a wide scale, an adverse effect on the health or safety of human beings or the environment that was not negligible, or the loss or damage to property exceeding \$5 000 (Tasmania 1994, s. 5).

If the Board decided that the proposed development posed no risk of serious or material environmental harm it was to inform local government that it required no conditions to be applied to any permit for that development. Alternatively, if it perceived a potential risk of serious or material environmental harm, it was bound to undertake an assessment of the proposed development and to direct local government to either include specific conditions, restrictions, or management or rehabilitation regimes in any permit, or to refuse a permit for that particular development. Except for the process associated with local government's approval of development classified as a permitted land use, these environmental management processes were substantially enhanced by the right for public submission over development proposals, and appeal to the Appeal Tribunal over dissatisfaction with environmental management decisions.

Environmental management and pollution control in relation to Level 3 activities lay primarily in the political domain. As is outlined above, proposed Level 3 activities required an integrated assessment to be undertaken by the Advisory Council. The assessment was to be in accordance with the Environmental Impact Assessment Principles, allow for public representation, although appeal was denied, whilst the conditions under which the proposed Level 3 activities were to proceed were subject to Parliamentary approval of the Minister's recommendations.

In addition to these environmental management and pollution control mechanisms were additional mechanisms available to the Board for ongoing environmental management and pollution control. They consisted of environmental agreements, financial assurances, environmental audits, and environmental improvement programmes. Environmental agreements, able to provide for the remission of fees, rates, or taxes were designed to encourage industry to meet specific environmental performance levels beyond compliance with the Act's regulatory standards. They were to specify the management, investment and monitoring functions considered necessary to meet the specified environmental performance levels, and could, for example, involve regular reports to the Board concerning the activity's current level of environmental performance. Financial assurances were intended to produce compliance with the Act. They could be requested by the Board from operators of Level 2 and Level 3 activities as guarantees that operators would not contravene specified

provisions of the Act, or as guarantees that operators would take specified actions within a specified time-frame to achieve compliance with the Act. If the specified provisions were contravened or specific actions were not undertaken to the Board's satisfaction, the Board was entitled to retain those assurances to be used towards the costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other persons as a result of the failure by the operator. As with all decisions by the Board, any person required to provide a financial assurance was entitled to appeal to the Appeal Tribunal against that requirement.

Environmental audits, used to assess the environmental performance of an activity, were an additional management tool provided by the Act. Mandatory audits could be requested by the Board when it considered an industry's on-going operation was causing, was likely to cause, or had caused environmental harm, however, voluntary audits could be undertaken by industry for self-assessment purposes. The findings from a mandatory audit were admissible as evidence in any proceedings either under the Act or to enforce the Act. The outcomes of voluntary audits were inadmissible in any proceedings, and were to remain confidential.

Environmental improvement programmes were specifically designed to achieve compliance with the Act under circumstances such as the transition to a new environmental standard. The programmes were to detail the environmental standards to be attained and the time-frame (limited to a maximum three years) for accomplishing the programme, and were to take into consideration best practice environmental management for that activity, and the existing risk of environmental harm it posed. The rationale for 'best practice environmental management' was to achieve an ongoing minimisation of environmental harm. Best practice environmental management was to be pursued through cost-effective measures assessed against current international and national standards applicable to the activity. Environmental improvement programmes were required when the Board considered that an activity was causing or could cause serious environmental harm, when an activity did not meet the then current regulatory standards, when or it was not practicable for a person to comply immediately with the commencement of a State Policy or provision or regulation made under the Act. Proposed environmental improvement programmes were to be publicly exhibited, and public submissions sought in relation to the proposal. Those responsible for the activity and any person having made representations concerning the programme could appeal the Board's decisions to the Appeal Tribunal.

5.2.4 *Comprehensive Enforcement Processes*

The System provided comprehensive enforcement processes. First and foremost the legislation underpinning the System bound the Crown and all others to undertake development and land use in a manner consistent with State Policy, planning schemes, including any conditions or restrictions attached to permits issued by local government, and all environmental management provisions. Conviction by a civil court for breaching State Policy or planning schemes could incur a maximum penalty of \$50 000, whilst the penalty for breaching environmental management provisions was a maximum \$1 000 000. In addition, the court could also order convicted persons to meet the costs incurred by local government in returning an activity or development to compliance with a planning scheme, or for remedying environmental damage.

Enforcement proceedings against breaches of State Policy and planning schemes, including the conditions or restrictions attached to a development permit issued by local government, could be initiated by the Review Panel, local government, or any person considered by the Appeal Tribunal to have a proper interest in the matter. If, after a hearing involving the applicant, the accused party, and any persons considered to have an interest in the matter, the Appeal Tribunal was satisfied that the accused party had breached any provision of a State policy, planning scheme, or development permit, it could issue an order against the accused. Orders could require the accused to refrain from the contravention, from using or developing the land to which the contravention related, or to remedy the contravention within a specified time-frame. Failure to obey an order by the Appeal Tribunal was an offence which, upon conviction in a civil court, carried a maximum penalty of \$50 000. The Appeal Tribunal, Review Panel or local government could also undertake any remedial work requested by the order, and recover the costs for that work from the accused. It was a responsibility of the Appeal Tribunal to apportion the professional costs of the proceedings, taking into account the result of the proceedings, whether a party had raised frivolous or vexatious issues or unnecessarily prolonged the proceedings, and the capacity of the parties to meet an order for costs.

Enforcement proceedings against breaches of environmental management provisions involved similar processes to those used to enforce State Policies and planning schemes, but the diversity of environmental management mechanisms added to the complexity of these enforcement proceedings. The opportunity for civil enforcement remained central to environmental management, and was undertaken through an identical process to the civil enforcement of State Policies and planning schemes. Where a person had breached, was breaching or proposing to breach any

provision of the *Environmental Management and Pollution Control Act 1994*, or had caused environmental harm as defined in the Act, the Director of Environmental Management, local government or any person the Appeal Tribunal considered had a proper interest in the issue could apply to it for an order. If the Appeal Tribunal considered the application warranted, it was to summons the applicant and the accused, and any person considered by it to have a proper interest in the subject matter, to a hearing. The Appeal Tribunal could subsequently issue an order directing the accused to cease the activity either temporarily or permanently, prohibit the use or development of land to which the activity related, or require compliance with any existing environmental agreement, environmental improvement programme or environment protection notice. The guilty party could also be required to pay the costs and expenses incurred by the Board or any public authority for having taken action to prevent, mitigate or remedy environmental harm, or to pay compensation to any person having suffered injury, loss or damage caused by the contravention. As with the decisions made by the Tribunal under the *Land Use Planning and Approvals Act 1993* for the enforcement of State Policies and planning schemes, decisions made by the Appeal Tribunal under the *Environmental Management and Pollution Control Act 1994* could only be appealed to the Supreme Court on points of law.

These processes were complemented by the numerous enforcement mechanisms consisting of environmental protection notices, environmental infringement notices, and the imposition of fines for offences causing serious or material environmental harm, or environmental nuisance. Environmental protection notices could be issued by local government officers in relation to Level 1 activities, and by the Director of Environmental Management for Level 2 and Level 3 activities. They were to be issued where environmental harm was being or was likely to be caused, where environmental harm had occurred and remediation of that harm was required, or if it was considered necessary, to vary the conditions of a permit, or implement a State Policy. Environmental protection notices could include the requirement that a person cease or not commence a specific activity, or take specific action in relation to a relevant activity. A maximum fine for breaching an environmental protection notice was \$1 000 000.

Environmental infringement notices could only be served by authorised officers for prescribed offences. There were sixty one offences with fines ranging from \$200 to \$1 000 for incidents including failure to notify the Department of Environment and Land Management of a change of address, and failure by an operator of an environmentally relevant activity to notify the Director of an accident. These notices

could be served on the spot, could not be appealed to the Appeal Tribunal and, unless paid within 21 days, the operator could be prosecuted for the offence before a court.

Fines imposed for acts causing environmental harm or nuisance depended upon whether the acts were considered intentional or reckless and were committed with the knowledge that environmental harm might result. Intentional acts undertaken with the knowledge that serious environmental harm might occur, would attract a maximum fine of \$1 000 000 for industry, and \$250 000 or a maximum four years imprisonment or both for private individuals. Intentional acts caused with the knowledge that material environmental harm might occur would incur a maximum fine of \$120 000 for industry, and \$60 000 for private individuals. Wilful offences causing environmental nuisance such as the emission of a pollutant that unreasonably, or was likely to unreasonably interfere with a person's enjoyment of the environment would result in a maximum fine of \$30 000, whilst for accidental offences the maximum fine was \$10 000.

5.2.5 *Summary*

The architects of the System attempted to provide for the integrated management of Tasmania's resources through a rationalised approach to development control, and the promotion of sustainable environmental outcomes. These intentions were pursued through an approach which demanded that the planning and environmental management requirements of development within the jurisdiction of the System were assessed simultaneously in a single development-approval process under the final responsibility of one approval body. Exceptions to this development-approval process included public land allocation, forestry, mining exploration and areas of the marine environment. These areas of development lay outside the jurisdiction of the System's processes. However, it was incumbent upon the Crown to promote the System's objectives, which were based on principles of sustainable development, in all decisions involving these as well as other areas of development.

The single development-approval process, synonymous with the development control process, was to be achieved by rationalising environmental and planning laws which previously involved numerous and separate approval processes, appeal rights and appeal bodies. The process comprised numerous integrated components. Planning schemes embodying planning requirements were fundamental to the process. They incorporated State strategic planning requirements introduced via State policies, and the requirements of local government and the community. These requirements were arrived at through a process of consultation intended to achieve the System's sustainable development objectives. The consultation process informing the development of State

policies required the System's chief administrative body, the Advisory Council, to encourage representation from all interested parties to draft policies and to fully consider those representations before submitting its recommendations for political acceptance. Local government and community planning needs, determined through a consultation process between local government and the community, were used to develop draft planning schemes that met the needs of both parties. Appeals against local governments' decisions were to be heard before the Review Panel, the responsible authority for planning scheme approval. It was also intended that State policies would incorporate the environmental management strategies recommended in state of the environment reports.

Despite initial intentions to pursue regional planning, there were no obligations for planning schemes to form regional planning strategies, but consistency between planning schemes was required to avoid conflicting uses of land adjoining municipalities. The responsibility for achieving this consistency lay with the Review Panel.

Planning schemes, in conjunction with the System's classification of development into three levels of 'permissible activity', provided the foundation for the assessment of environmental management requirements within the development-approval process. Each level of development included a well defined assessment pathway that mandated, to varying degrees, public consultation and representation concerning development proposals, an appropriate level of environmental impact assessment, consultation with all relevant State agencies, and the right of appeal against decisions perceived as unsatisfactory. All appeals except those concerning the development or amendment of planning schemes were to be heard before the System's consolidated appeal body, the Appeal Tribunal. Supporting these processes designed to achieve improved environmental outcomes were numerous environmental management mechanisms including environmental agreements, environmental improvement programmes and environmental audits.

The System incorporated broad enforcement capabilities, including provisions for civil enforcement for both development control and environmental management decisions, and allowed substantial penalties for activities causing environmental nuisance or serious or material environmental harm. The Appeal Tribunal was responsible for all enforcement and prosecution of the System's provisions and determinations.

5.3 Conclusions

The legislation which emerged at the culmination of the process of reform was intended to integrate environment and development. Combined with a set of common objectives which incorporated relevant principles, the System's architects believed this would result in significant progress towards sustainable development. The integration of environment and development depended on the successful implementation of policies to integrate environmental management and planning, to facilitate public participation, to assess the environmental and social consequences of development, to provide extensive appeal and enforcement, and to require transparent and accountable development decision-making by government. These policies were to be implemented through the integration of the four fundamental areas of development and environment regulation.

It appears, at least in principle, that a substantive level of integration of these areas of regulation was achieved. There was no better example of integration than the System's single development-approval process for controlling Level 2 development, that is, development considered to have the potential to result in serious or material environmental harm. This process required development proposals to travel an approval pathway where planning approval was integrated with environmental management through assessment by an independent body of potential environmental and social impacts. The pathway was comprehensively punctuated with opportunities for public participation, including the right of appeal, with the final determinations after appeal fully enforceable. The policies of integration, participation, assessment, appeal and enforcement, and transparency and accountability are clearly evident.

In theory, the level of integration achieved by the System's architects promised substantial implementation of the policies underpinning the System. The degree to which this integration and the subsequent translation of policy into practice might eventuate, however, can be determined only through detailed assessment of the legislation, and from observations drawn from the System's initial period of operation.

Given that the reform process was initiated in response to the problems associated with development and the environment, the integration of these four regulatory areas appears to have substantially addressed the perceived failings of the former environment and planning legislation discussed in chapter three, and the problems and conflicts discussed in chapter two. In this respect the System heralded an integrated approach to environment protection and land use planning, the replacement of pollution control with environmental management, the provision of comprehensive

planning instruments and processes, and a substantive level of enforcement. As a consequence, government could expect to encounter extreme difficulties if it contemplated separating development from its impacts on the environment and the community, excluding the public from the development process, pursuing a development-approval process based on political needs, or negotiating agreements with developers behind closed doors. The reality is also assessed in chapter eight.

The importance of the objectives and policies enshrined within the legislation lay in their employment by the System's architects as the means for achieving sustainable development. As revealed in chapter four, however, this was based on a multitude of influences. These included the needs of the community arrived at through public consultations, the perceived failings of the previous environmental protection and land use planning legislation, and Tasmania's commitment to federal initiatives - of which many were a response to the growing international recognition of the need for sustainable development outcomes, and not least, the System's architects' understanding and knowledge of the concept of sustainable development. Added to these were the demands by State government for a streamlined development-approval process for industry, and the need to tailor draft legislation for approval by Tasmania's historically conservative Parliamentary Upper House.

Given these influences, particularly those of the major federal initiatives¹ which were severely criticised for their compromise and lowest common denominator policies (see Hare 1991, Fitzgerald 1992, Eckersley 1995), combined the complexity of the concept of sustainable development, how comprehensively did the objectives and policies embrace the concept? This question can only be answered by clarifying what can be accepted as the international benchmark concept of sustainable development. Although sustainable development is an evolving idea, a certain understanding was set as an international benchmark by the United Nations Conference on Environment and Development in Rio De Janeiro in 1992. In the following chapter I clarify and relate this benchmark to Tasmania.

¹the Intergovernmental Agreement on the Environment and the National Strategy for Ecologically Sustainable Development

PART II

THE SYSTEM:

ITS ASSESSMENT AGAINST SELECTED CRITERIA

Chapter Six

The Evolution of the Benchmark for Sustainable Development and its Relevance to Tasmania

6.1 Chapter Rationale

My investigation in this chapter of a Tasmanian benchmark for sustainable development sets the context for assessing, in the following chapter, the degree to which the System incorporated sustainable development principles, and its potential to achieve their objectives. The (Tasmanian) benchmark consists of selected principles and objectives from the international benchmark which emerged from the two international landmark events: the World Commission for Environment and Development (the Brundtland Report), and the United Nations Conference on Environment and Development (the Earth Summit). The principles and objectives are selected on the basis of their relevance to the sustainable development issues that a resource management and planning system for Tasmania could be reasonably expected to address given Tasmania's political, social and environmental circumstances.

The concept that emerged from the Brundtland Report and the Earth Summit generated substantial criticism, and these are visited briefly. Despite these criticisms, however, this concept, in view of its international acceptance, is the most practical for assessing attempts to institute sustainable development.

6.2 The Evolution of the Benchmark

Sustainable development is a concept that has attracted international attention within the past 25 years. Its roots lie in concerns for the effects of increasing population, resource exploitation and pollution on the environment. The first truly international discussion of these concerns was the United Nations Conference on the Human Environment held in Stockholm in 1972, concerns, according to Rowland (1973: 9-19), that received added impetus with the release of the Club of Rome's *Limits to Growth* (Meadows et al. 1972) prior to the conference. Meadows et al. reported a global situation of exponential growth in population and resource use which if left unaddressed would lead to future calamity. Twenty years later, the Earth Summit was pursuing the conclusions that the present growth trends in world population,

industrialisation, pollution, food production, and resource depletion were unsustainable, but that it was possible to alter these trends whilst still satisfying the basic material needs of each person on earth and creating opportunities for each person to realise his or her human potential. According to Maurice Strong, the Conference chairperson, the one hundred and fourteen nations gathered to discuss these concerns were bound by the knowledge that nations would either overcome or be conquered by their divisions, greed, inhibitions and fears (Rowland 1973: viii).

The Conference yielded four clear findings: that environmental issues were inextricably linked with all other factors in contemporary world politics, that a new perception of humankind's relationship with not only the natural world but with itself was urgently needed, that the problems of the rich could not be seen in isolation from those of the poor, and that we all inhabit one earth. Nevertheless, consensus amongst nations on a Declaration on the Human Environment was achieved only amidst substantial dissent. The seeds of sustainable development were sown, however, in the first principle of the declaration. It asserted humanity's fundamental right to an environmental quality that permitted a life of dignity and well-being, and that governments' policies needed to protect and enhance the environment for future generations through careful planning and management, especially in relation to the exploitation of renewable and non-renewable resources (United Nations 1992a).

Most commentators attribute the release of the World Conservation Strategy in 1980 by the International Union for the Conservation of Nature and Natural Resources in collaboration with the United Nations Environment Programme and the World Wildlife Fund as the next landmark in the development of the concept of sustainable development. The document was circulated to all governments, and national conservation strategies were subsequently adopted in approximately 50 countries (Beder 1993: xiii). The document asserted that human activities were progressively undermining the life-supporting capacity of the planet whilst, simultaneously, the numbers relying upon that capacity were increasing (IUCN, UNEP & WWF 1980: Section 9.1). Development was accepted as necessary to satisfy human needs and to improve the quality of human life, but to guarantee humanity a future in which it could survive and flourish, it was believed imperative that development incorporate the Strategy's prerequisites for sustainability.

These prerequisites included a new international economic order, a new environmental ethic, and a stabilised human population. The central focus of the World Conservation Strategy was, however, that conservation of living resources and

development were not mutually exclusive, but needed to be mutually reinforcing if human survival and well-being were to be assured. Conservation was defined as 'the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations' (Section 1.4). The conservation of living resources was seen to have three specific objectives: to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilisation of species and ecosystems. It was asserted in the Strategy, that for development to be sustainable, approaches to conservation must consider social and ecological as well as economic factors, the living and non-living resource base, and the long term as well as the short term advantages and disadvantages of alternative actions.

Following the World Conservation Strategy proclamation of the need for change, the United Nations initiated an international investigation of development and the environment, followed by an international forum to resolve the means to implement the conclusions from that investigation. The World Commission on Environment and Development was established in 1984 and released its findings (the Brundtland Report) in 1987 on a 'global agenda for change' (World Commission on Environment and Development 1987: ix). The Commission's discussions with the international community directed its focus to one central theme: that 'many present development trends leave increasing numbers of people poor and vulnerable, while at the same time degrading the environment' (World Commission on Environment and Development 1987: 4). This focus led the Commission to doubt the capacity of the environment to support an ever increasing population under present development trends, and to conclude that although increased economic growth in developing countries was fundamental to relieving poverty, a new model of development, broader than merely economic growth, was imperative if human development was to be sustained well into the distant future. With this understanding, the Commission saw the implementation of sustainable development, which it defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs', as an urgent need for both developing and industrial nations alike (World Commission on Environment and Development 1987: 43). The Commission emphasised the need for changes in attitudes and the reorientation of policies and institutions, and suggested that these needs be addressed through subsequent regional and international conferences.

The United Nations Conference on Environment and Development (the Earth Summit) was an international forum initiated in response to the Brundtland Report's call for action. It was initiated in 1989 and convened in 1992 with an agenda to 'elaborate strategies and measures to halt and reverse the effects of environmental degradation in

the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries' (United Nations 1989: 13). The Earth Summit not only achieved a more comprehensive understanding of the issues surrounding environment and development presented in the Brundtland Report, but its importance was marked by the consensus of all governments attending the Summit on clarifying and developing measures for implementing remedies for those issues.

6.3 The International Benchmark for Sustainable Development

6.3.1 *The Current Consensus*

The United Nations Conference on Environment and Development (the Earth Summit) in Rio de Janeiro, Brazil, in June 1992 is arguably the most important influence on the evolution of the concept of sustainable development to date. Approximately 100 heads of State and government representing almost 98% of the planet's population gathered at the conference, which was the culmination of two years intense preparation by the United Nations. Among other outcomes, the preparations resulted in the adoption of the 'Rio Declaration on Environment and Development' (United Nations 1992a), the formulation of two conventions addressing climate change and biological diversity, and Agenda 21 (United Nations 1992b). The Rio Declaration on Environment and Development consists of 27 principles which form the basis for sustainable development. Agenda 21 contains the objectives of those principles, including those from the conventions addressing climate change and biological diversity, and the proposed measures and strategies for pursuing those objectives.

Most commentators have assessed the conference as beneficial in achieving international acknowledgment of the diverse problems associated with the present development pathway. However, the absence of any binding responsibilities on governments to redress these problems has been noted by most commentators as disappointing. For example, Johnson (1993: 6) asserted that although Agenda 21 is a worthy document in respect of an international commitment to sustainable development, it is nonetheless exhortatory in nature, suffering from the absence of any obligations on or commitments from the parties involved. The limitations to Agenda 21 producing an adequate response to the problems associated with environment and development is also underlined in Sitarz's assessment, written in conjunction with the United Nations. Sitarz (1993: 8) described it as a 'blueprint for action' ... that ... '*proposes* specific activities for confronting particular problems' (italics added).

6.4 The Benchmark's Relevance to Tasmania

6.4.1 *Principles*

It is widely held that the Brundtland Commission's definition of sustainable development contained three general principles: development was to be interpreted as economic growth, and inter-generational and intra-generational equity. The 27 principles in the Rio Declaration on Environment and Development (United Nations 1992a) (reproduced in appendix III) elaborate these three general principles, albeit reflecting the limitations imposed by the inherently broad nature of sustainable development, and a tendency towards accepting the lowest common denominator due to the need for international consensus. The principles' central focus for sustainable development is the entitlement of all human beings to a healthy and productive life in harmony with nature. This entitlement requires that all development equitably fulfils the developmental and environmental needs of both present and future generations. The accepted principle on which these needs will be fulfilled is economic growth, but environmental protection must be integrated into the economic development process.

The remaining principles support this central focus, however, only those principles considered directly relevant to Tasmania's political, social and environmental circumstances are included in the benchmark. Within these parameters, Tasmania's political status as a state within a federation largely excludes those principles concerning international technological and scientific assistance to developing nations, the development and promotion of international environmental law, the promotion of global economics, the sovereign right to exploit its own resources, the relocation and transfer of hazardous materials, and responsibilities for initiating the proposed global partnerships. Tasmania's current social circumstances of relative affluence, limited population and the absence of military conflict also exclude the need for those principles concerning the eradication of poverty and the protection of the environment in situations of war and in States under occupation. Finally, Tasmania possesses no infrastructure, such as nuclear power, which could cause, and therefore require the principle for the international notification of trans-boundary environmental disasters.

By deduction, therefore, in addition to the principles of intergenerational equity and economic development, there are six broad principles considered relevant to a benchmark appropriate to Tasmania. Participation by the broad community in the decision-making process at all relevant levels is a fundamental prerequisite for sustainable development. Participation must be encouraged and facilitated by the availability of information and effective access to administrative and judicial processes. In Agenda 21 it is stipulated that education is critical for effective public participation in

decision-making (United Nations 1992b: ch. 36.3). Education is the means for providing people with an improved capacity to address their environment and development concerns, and for achieving environmental and ethical awareness, values and attitudes, and skills consistent with sustainable development. The participation of women, youth, and indigenous people and their communities is also vital for sound environmental management, whilst support for the identity, culture and interests of indigenous people is an inextricable component of sustainable development.

One of principles repeatedly confirmed at the Earth Summit as central to sustainability is the reduction and elimination of unsustainable patterns of production and consumption. This principle (Principle 8) is elaborated in Agenda 21, and includes unsustainable patterns of production and consumption by industry, and also the reduction and elimination of unsustainable patterns of domestic consumption. Reducing and eliminating these unsustainable patterns of production and consumption should be undertaken using the principle of market economics. In this context, the environmental costs of development should be internalised by placing the costs of pollution upon the polluter and the costs of resource consumption upon the consumer. The internalisation of these costs must, however, be undertaken with due regard to the public interest and without distorting international trade and investment.

The need for effective environmental legislation outlining appropriate environmental standards, management objectives and priorities is clearly emphasised in the Rio Declaration on Environment and Development. However, when implementing these standards, objectives and priorities, the domestic environment in which they operate and the economic and social costs to other countries must be considered. Assessing the environmental impact of proposed activities likely to have a significant adverse effect on the environment is a principle also considered essential for arriving at sustainable decisions. Allied to this principle is the principle of precaution. A precautionary approach should exist with all development, whilst an absence of scientific certainty should not be used to justify postponing cost-effective measures to prevent environmental degradation where threats of serious or irreversible damage to the environment exist.

6.4.2 *Objectives*

Agenda 21 is a multi-functional document. It clarifies the principles of sustainable development by defining the objectives of those principles, and proposes the measures by which those objectives can be achieved. These measures, presented in specific action programmes, were broadly designed to achieve the sustainable and

efficient use of global natural resources, the effective management of pollution and the waste products of development, revitalised development in developing nations, the elimination of global poverty, a stabilised level of human population, and a basic standard of living for all humanity.

Given Tasmania's position as an industrialised State within a federation, the parameters of the sustainable development objectives for which Tasmania is responsible are clearly defined, that is, for those objectives associated with the sustainable and efficient use of global natural resources and the effective management of pollution and the waste products. Not only are these objectives commensurate with Tasmania's position, but in Agenda 21 these objectives are also clearly separated from those concerning the needs of developing countries and the international economic, political and technological assistance necessary for developing countries to meet those needs. Moreover, responsibility for these objectives is placed squarely at the feet of the industrialised nations; a recognition that excessive consumption patterns in the industrialised countries were both placing immense stress on the environment and aggravating poverty in developing nations.

Agenda 21 presents a broad range of objectives in relation to the sustainable and efficient use of global natural resources and the effective management of pollution and the waste products of development. Those objectives which are commensurate with the benchmark principles considered relevant to Tasmania can be incorporated within four distinct areas: the efficient use of the Earth's natural resources, the protection of the global commons, the management of hazardous and solid wastes, and sustainable human settlement. Within these areas, because of Tasmania's social and environmental circumstances, there are also objectives which have only minimal relevance to the benchmark, and are excluded. These include issues such as the need to combat desertification, to promote sustainable mountain development, and to address the environmentally sound management of biotechnology.

The measures outlined in Agenda 21 as necessary for achieving these objectives consist of a comprehensive set of processes for integrating environment and development in the decision-making process. These are examined, and employed, in chapter seven, in assessing the System's potential to achieve the objectives of the benchmark.

6.4.2.1 The Efficient Use of the Earth's Natural Resources

It is confirmed in Agenda 21 that unsustainable production and consumption patterns, particularly in the industrialised nations, are the major cause of the continuing degradation of the global environment (United Nations 1992b: ch. 4.3). Furthermore, the rate of degradation will undoubtedly only increase as developing countries, which provide most of the increase in global population, raise their living standards. Consequently, there is an urgent need to redress these patterns through efficient resource use focused on increased production efficiency by industry, and the conservation and management of land, fresh water, agriculture, forests and biological diversity.

To rectify these patterns industry must develop more efficient and environmentally sound production technology, including technology to improve pollution abatement (United Nations 1992b: ch. 9.16). Only through increased efficiency will industry decrease its resource consumption and production wastes per unit of production. To encourage improved efficiency, in the action programmes it is proposed that natural resources used in production and or as receptacles for discharging industrial wastes be valued as economic resources. Without the stimulus of prices and market signals to clearly indicate the environmental costs of the consumption of natural resources, materials and energy, and the generation of wastes, it is claimed that significant changes in production and consumption patterns seem unlikely to occur in the near future (United Nations 1992b: ch. 4.24). The underlying sentiment is that the environment will be protected only by placing economic values on environmental resources. Energy consumption is accepted as a major component of production efficiency. The need for increased energy use efficiency primarily concerns the need to minimise the atmospheric pollutants resulting from fossil fuel energy production. This issue is addressed in the following section concerning the protection of the global commons.

An integrated view of land reveals it is not only topographical and spatial, but supports the terrestrial components, organised as ecosystems, essential to the maintenance of the integrity of life-support systems and the productive capacity of the environment. It is asserted in Agenda 21 that land use must maximise the sustainable productivity and use of land (United Nations 1992b: ch. 10.3). The goal of land management must be to satisfy the need for economic development and equity whilst protecting and enhancing the environmental and resource base that makes sustainable development possible. To these ends, in the action programmes it is proposed that detailed land use planning that specifically accommodates protected areas, agriculture, forests, human settlement and rural development be established (United Nations 1992b:

ch. 10.5). Furthermore, it is proposed that land development be undertaken in two steps. The first step is to determine how land use affects humanity and, secondly, to determine the impacts from using land resources on air, water, soil, plants and animals (United Nations 1992b: ch. 10.3). The desired outcome should enable humanity to obtain the maximum sustainable use of land resources, while providing for the long-term protection of those resources.

Agenda 21 also addresses the inappropriate and uncontrolled global use of land which it is claimed is a major cause of degradation and depletion of land resources (United Nations 1992b: ch. 14.34). Moreover, the Earth Summit affirmed land degradation to be the 'most important environmental problem affecting extensive areas of land in both developed and developing countries' (United Nations 1992b: ch. 14.44). Fundamental to this depletion is the often total disregard for the carrying capacities and limitations of the land, a disregard that has created soil degradation accompanied by increasing salinization, waterlogging, soil pollution, and loss of fertility. It was agreed that land use planning and better land management could provide long-term solutions to this problem. There was, however, an urgent and immediate need to halt soil loss and erosion, and to maintain and improve the capacity of highly productive land whilst conserving and rehabilitating less productive land. In Agenda 21 it is proposed that land conservation and rehabilitation programmes requiring strong political support, adequate funding, and local community participation are essential to implement effective conservation and rehabilitation measures to address this serious threat, and that these measures must be implemented before the year 2000 (United Nations 1992b: ch. 14.44, 14.45). The success of these programmes would depend on identifying and removing the physical, social and economic causes of soil degradation.

Fresh water is a finite resource, indispensable for sustaining all life, and vital to human economic activity. Many activities are cited in Agenda 21 to be depleting the quantity and quality of global fresh water supplies. For example, the sedimentation of water catchments through poor land use planning and deforestation is reducing the quantity of available fresh water, whilst the excessive use of fertilisers and pesticides is not only diminishing the quality of fresh water, but contaminating coastal waters and resulting in decreased coastal fishery yields (United Nations 1992b: ch. 18.35); an important consideration for Tasmania's intensive coastal marine farming industry. Widespread use of water bodies for the discharge of domestic and industrial wastes is also contributing to the degradation of water resources. Such discharges are leading to the salinization of rivers, lakes and soils, and resulting in the loss of soil fertility and food production, decreasing fresh-water wetlands, as well as endangering human health.

The progressive encroachment of human activities and the gradual pollution and destruction of finite water supplies requires a comprehensive approach to water resources assessment and management (United Nations 1992b: ch. 18.3). In this respect a preventative approach is crucial to avoid costly subsequent measures to rehabilitate, treat and develop new water supplies. This approach should involve planning for the rational use and protection of water resources, and the identification and protection of potential sources of fresh water supplies (United Nations 1992b: ch. 18.9). Full public participation in planning water use and protection, the education of decision-makers concerning the long term implications of vegetation loss and water consumption, the promotion of schemes for rational water use through public education, and the levying of water tariffs and other economic instruments are seen as viable means for integrated water resource management (United Nations 1992b: ch. 18.12). It is affirmed in Agenda 21 that in developing and using water resources, priority must be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately.

Agenda 21 takes into account the multiple roles of forests, particularly as carbon sinks, and in preserving biodiversity, watersheds and soils as fundamental to sustainable development. Forests worldwide are threatened by uncontrolled exploitation through circumstances such as the pressure to expand agricultural areas, the increased demand for forest products, and a general lack of understanding and information on the value of forests (United Nations 1992b; ch. 11.11-11.13). Urgent and consistent action is seen as imperative to conserve and sustain the remaining forest resources, and to expand forested areas and tree cover. It is proposed that protected forest areas, especially those containing primary old-growth forests, be expanded worldwide through appropriate methods such as extending world heritage sites, and that revegetation of degraded farm lands, highlands and bare lands should be a priority.

The vast resource potential of forests have as yet been unrealised (United Nations 1992b; ch 11.21) It is proposed that improved management combined with forest-based value adding processing industries will result in increased production of wood and non-wood products, and increase the economic value of forests globally. In addition to the economic value of forests, and requiring equal consideration within the context of sustainable development, are the social and ecological values of forests. To ensure the sustainable management of forests, it is proposed that these values be incorporated into national accounting systems. It is also proposed in Agenda 21 that more environmentally sound practices for harvesting, and that more efficient methods for using forest products, for example as energy sources and in utilising forest waste, need to be developed.

Despite recognising the role of forests in sustainable development, it is claimed in Agenda 21 that over the past 20 years continued habitat destruction, over-harvesting of lands, inappropriately introduced foreign plants and animals throughout the world, and endemic pollution had systematically continued to destroy the planet's biodiversity (United Nations 1992b: ch. 15.3). The action programmes emphasise that immediate intervention is required to protect ecosystems and to conserve global biological and genetic resources (United Nations 1992b: ch. 15.5). To these ends, the assessment and study of biodiversity should be reinforced at all levels, and sustainable methods of agriculture, forestry, and wildlife management which maintains or increases biodiversity should be developed and introduced. It is proposed that the protection of biodiversity should be a consideration of policy and decision-making at all levels, and that education programmes stressing the vital role of biodiversity in the continued health and welfare of humanity should be established.

One of the interconnecting threads throughout the majority of the action programmes proposed in Agenda 21 concerns the consumption patterns associated with the life-styles within industrial society. These patterns were vehemently criticised by developing nations at the Earth Summit as inefficient and causing the excessive use of natural resources. According to Johnson (1993: 151), this was one of the most contentious issues raised at the Earth Summit, evoking a reluctance on the part of members of industrialised nations to admit that the Western life-style had had a detrimental impact on the global environment. Johnson asserted that members of OECD countries were wary of admissions of guilt for the environmental consequences of past consumption patterns for two reasons. Admissions would leave the governments of these countries vulnerable to compensation claims from developing countries, and with consumption in OECD countries increasing on a per capita basis, it was tantamount to these governments condemning their present consumption patterns. It is claimed in Agenda 21 that a fundamental change to these patterns is essential to achieve sustainable development, especially if the increasing living standards necessary in developing countries are to be accommodated within the carrying capacity of the planet. Central to changing these patterns is the need to reassess the concept of economic growth, wealth and prosperity in order to reduce consumption (United Nations 1992b: ch. 4.11, 4.13). Other proposals include promoting more environmentally sound products, recycling, reducing wasteful packaging, encouraging a more environmentally-conscious consumer society, developing the means for assessing the full environmental impact of products and production processes, and identifying sustainable consumption patterns.

6.4.2.2 Protecting the Global Commons

The Earth Summit acknowledged that the atmosphere and the oceans, which are fundamental to global climate and weather and life-sustaining processes, were under threat from increasing atmospheric concentrations of greenhouse gases and the unsustainable development of land and coastal and marine environments. The action programmes in Agenda 21 affirm that sustainable energy development and consumption, preventing stratospheric ozone depletion, and appropriate land and coastal and marine resource use are major priorities for solving problems associated with the global commons.

Few sustainability issues are as multi dimensional as energy production and consumption. Energy production and consumption is pivotal to economic growth, social development, and the global community's quality of life; however, it is asserted in Agenda 21 that the environmental impacts from current generating technology cannot be sustained if a substantial increase in global energy production is required (United Nations 1992b: ch. 9.9). According to Sitarz (1994: 82) ninety percent of global energy is supplied from fossil fuels, resulting in significant emissions of atmospheric pollutants such as lead, sulphur dioxide and the greenhouse gas carbon dioxide. It is claimed in Agenda 21 that the control of atmospheric emissions of greenhouse and other gases and substances would require more efficient energy production, transmission, distribution and consumption, and increased reliance on environmentally sound energy systems, particularly new and renewable sources of energy.

The two sectors noted as requiring concerted energy efficiency measures were industry and transportation (United Nations 1992b: ch. 7.46-7.48). It is proposed that the improved production technologies necessary for industry to increase its resource use efficiency ~~also include technologies that reduce the energy consumed per unit of~~ production. Traffic and transport systems are deemed to need more effective design and management. To these ends it rests upon governments to develop and promote systems that are cost-effective, efficient, safer, less polluting, integrated rural and urban mass transit, and provide environmentally sound road networks (United Nations 1992b: ch. 7.51).

Despite the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, it is confirmed in Agenda 21 that the total chlorine loading of the atmosphere of ozone-depleting substances continues to rise. It is asserted that compliance with the control measures, such as replacing CFCs and other ozone-depleting substances, identified

within the protocols, will redress this situation. One of the few proposals within Agenda 21 designed to compensate for the adverse circumstances resulting from unsustainable activities, is that strategies be developed to mitigate the effects of ultraviolet radiation reaching the Earth's surface.

The call in the action programmes for appropriate land use practices specifically concerns the felling and burning of forests for agricultural land. This practice, which decreases available carbon sinks whilst simultaneously committing increased amounts of carbon to the atmosphere was a central concern at the Earth Summit. In response to this concern it was agreed that governments should promote appropriate land resource use practices that limit greenhouse gas emissions and conserve and enhance all greenhouse gas sinks.

Chapter seventeen, the longest and most complex of the action programmes of Agenda 21 is reserved for the sustainable management and use of marine and coastal environments (United Nations 1992b: ch. 17). In the chapter it is affirmed that the Earth's oceans and seas and coastal areas form an integrated component that is not only essential to the global life-support system, but is an asset that provides significant opportunities for sustainable development. Current approaches to marine and coastal resource management are seen as largely unsustainable due to their erosion and degradation of those resources (United Nations 1992b: ch. 17.4). It is proposed that coastal States commit themselves to sustainably managing the coastal areas and the marine environments within their national jurisdictions through an integrated policy and decision-making process that includes all sectoral considerations, and promotes a compatibility of uses (United Nations 1992b: ch. 17.22).

Within Agenda 21 is a recognition by those governments attending the Earth Summit of their responsibilities for the protection and preservation of the marine environment under the United Nations Convention on the Law of the Sea. The major focus in the action programmes is, however, the land-based activities affecting marine resources. These contribute up to seventy percent of marine pollution, of which sewage, nutrients, synthetic organic compounds, sediments, litter and plastics are among the most destructive. The programmes include proposed measures to limit this pollution whilst accommodating the sustainable development of coastal areas. These measures include improving coastal human settlements, particularly the treatment and disposal of sewage, solid wastes and industrial effluent, the conservation and restoration of altered and critical habitats, and the sustainable integration within coastal areas of potentially damaging development such as agriculture, tourism, fishing and industry. To achieve

these goals it is proposed in Agenda 21 that coastal development requires improved regulatory and monitoring programmes to control effluent discharges, the introduction of minimum sewage effluent guidelines and water quality criteria, the development and application of control and recycling technologies, and watershed management practices designed to prevent control and reduce degradation of the marine environment.

6.4.2.3 Sustainable Management of Hazardous and Solid Wastes

According to Agenda 21, human health and environmental quality are continuing to diminish because of the increasing amounts of hazardous wastes being produced and disposed. Certain approaches to prevent or minimise future hazardous waste problems are proposed. Central to these are minimising the production of hazardous wastes through development of low-waste production technologies, including technology to transform hazardous wastes to reusable materials (United Nations 1992b: ch. 20.10). Substantial capital investment by industry is seen as important for developing these technologies, and it is proposed to entice such investment using economic incentives.

The issues surrounding the environmentally sound management of solid wastes such as domestic refuse and non-hazardous wastes in achieving environmentally sound and sustainable development in all countries is seen as equally important to those surrounding hazardous wastes. This concern is in large part based on the belief that the present trend in environmentally persistent wastes will increase the present volume of those wastes four-fold by the year 2025 (United Nations 1992b: ch. 21.7). The proposals to avoid these waste management problems include minimising wastes through greater efficiency in resource use, maximising environmentally sound waste reuse and recycling, and promoting the environmentally sound disposal and treatment of wastes (United Nations 1992b: ch. 21.5). Scientific assessment of the assimilative capacity of the environment into which wastes are to be discharged is essential.

The overall contention in Agenda 21 is, however, that the root cause of the waste management problem is not unsafe or inadequate waste disposal or recovery measures, but the unsustainable patterns of production and consumption that are increasing the quantities of environmentally persistent wastes at unprecedented rates (United Nations 1992b: ch. 21.4, 21.7). Having drawn this conclusion, it is proposed that the best opportunity for reversing current problems associated with waste production trends is to focus on changing the lifestyles perpetuating these production and consumption patterns.

6.4.2.4 Sustainable Human Settlement

The theme of sustainable human settlement is intertwined in the three themes previously addressed. It is affirmed in Agenda 21 that the consumption patterns of industrialised cities are severely stressing the global ecosystem, and that the environmental implications of urban development need to be recognised and addressed in an integrated fashion by all countries (United Nations 1992b: ch. 7.1, 7.4).

The issue of sustainable human settlement is approached with a dual focus: it should not only encompass the sustainable management of the settled environment, but also the quality of human life (United Nations 1992b: ch. 7.4). Concerns for the quality of human life involve the deteriorating living and working conditions of the urban and rural poor in developing countries; a deterioration attributed to growing unemployment and minimal government spending on human settlement development. Although this deterioration in living and working conditions is not a significant problem in Tasmania, it highlights that the quality of human life in terms of a fair and equitable share of the Earth's resources is fundamental to sustainable development, and must be a consideration in all human settlement decisions.

The objectives of the sustainable management of human settlements involves improving their social, economic and environmental qualities. Achieving these objectives will require improving human settlement management, sustainable land use planning and management, the integrated provision of environmental infrastructure, sustainable energy and transport systems, and sustainable construction industry activities (United Nations 1992b: ch 7.5).

It is claimed in Agenda 21 that improved human settlement management is dependent upon management guidelines that address land use, the urban environment and infrastructure, and municipal finance and administration. Equal in importance to these guidelines, however, is the participation of the public and private sectors, and the community. It is proposed that only through the community's identification of its public services, urban infrastructure, and public amenity needs, as well as its sentiments concerning cultural heritage protection, will attempts to improve urban environments succeed (United Nations 1992b: ch. 7.20). An essential ingredient in achieving sustainable human settlement is the need to strengthen the capacities of local authorities to enable them to deal more effectively with the broad range of development and environmental challenges associated with ecologically sound urban design.

Land use planning and management practices that integrate the land resources necessary for the conflicting demands of industry, housing, commerce, agriculture, and the need for open spaces are considered imperative for sustainable urban development (United Nations 1992b: ch. 7.30). It is proposed that all governments undertake a comprehensive national inventory of their land resources in order to establish a land information system in which land resources can be classified according to their most appropriate uses. This inventory should include national land management plans to guide land-resource development and utilisation. Central to this inventory should be statutory policies designed to achieve environmentally sound urban development, addressing such issues as land utilisation, housing, and the improved management of urban expansion.

One of the growing concerns surrounding urban expansion is urban sprawl (United Nations 1992b: ch. 7.29). It is claimed to be expanding resource degradation over an ever wider land area, whilst simultaneously increasing pressures to convert additional open space and agricultural/buffer land to development. Improved human settlement management is seen as the principal means to halt this continuing sprawl.

It is asserted in Agenda 21 that an integrated approach to the provision of environmentally sound infrastructure in human settlements is an investment in sustainable development that can improve the quality of life, increase productivity, and improve human health (United Nations 1992b: ch. 7.36). It is proposed that all governments assess the environmental suitability of their human settlement infrastructure, develop national goals for the sustainable management of waste, and implement environmentally sound technology to ensure that the environment, human health and quality of life are protected. To these ends it is believed that infrastructure and environmental programmes designed to promote an integrated approach to the planning, development, maintenance and management of environmental infrastructure such as water, sanitation, drainage and solid-waste management should be strengthened.

It is proposed that environmental infrastructure be provided in accordance with certain principles. These include minimising or avoiding environmental damage, recognising the need to find suitable means for extending basic services to all households, and recovering the costs of infrastructure services. A proposal for meeting these last two principles includes recovering the full costs of environmental and other services such as water, sanitation, and roads from higher income areas to fund an improved level of infrastructure to poorer urban areas.

Most energy production is used to support human settlement, whilst a substantial percentage of energy consumption occurs in the domestic sector. According to Agenda 21, many metropolitan areas in developed nations suffer from the polluting effects of energy production and use, and the protection of the urban environment depends upon increasing the efficiency of energy use and promoting the use of renewable energies (United Nations 1992b: ch 7.47). Developed countries are by far the largest consumers of energy. To redress the problems associated with their level of consumption, it is proposed in Agenda 21 that they develop energy planning and management programmes that include the promotion of renewable and alternative sources of energy, whilst also evaluating the life-cycle costs of their current systems and practices in relation to their air quality problems.

In Agenda 21 it is claimed that the causes of urban atmospheric pollution are associated not only with the technological inadequacies in commercial energy generation and an increasing demand for commercial energy resulting from inefficient energy use, but also with the rapid expansion in the number of motor vehicles; transport accounting for about thirty percent of commercial energy consumption and about sixty percent of the total global consumption of liquid petroleum (United Nations 1992b: ch. 7.49). If the causes of urban atmospheric pollution are to be addressed, it is essential for governments to develop and promote efficient and environmentally sound urban transport systems. These systems should integrate land use and transport planning to encourage development patterns that reduced transport demand, adopt urban-transport programmes that provided high-occupancy public transport, and encourage non-motorised modes of transport by providing safe cycleways and footways in urban centres.

Construction plays a vital role in human settlement development. Construction activities, however, can be a major source of environmental damage through depletion of the natural resource base, degradation of fragile ecosystems, chemical pollution, and the use of building materials harmful to human health. To avoid these outcomes it is proposed in Agenda 21 that a series of measures be introduced to govern construction activities. These measures include introducing standards and regulations to promote the increased use of energy efficient designs and technologies, the sustainable utilisation of natural resources in an economically and environmentally appropriate manner, appropriate land use policies, and planning regulations specifically intended to protect ecologically sensitive areas against physical disruption.

Because so many of the problems and solutions being addressed by Agenda 21 have their roots in human settlement management, the 'participation and cooperation of local authorities will be a determining factor in fulfilling its objectives' (United Nations 1992b: ch. 28.1). It is proposed in Agenda 21 that this participation and cooperation takes the form of a 'local Agenda 21'. This would involve each local authority entering into consultation and consensus-building with its citizens, local organisations and private enterprises to formulate the best strategies for constructing, operating and maintaining economic, social and environmental infrastructure, for establishing local environmental policies and regulations, and for implementing national and sub-national environmental policies.

Thus far this chapter has outlined the principles, objectives and means for achieving those objectives of the benchmark for sustainable development determined by the author as relevant to Tasmania. It is proposed in Agenda 21, however, that sustainable development can only be achieved by placing environment and development at the centre of economic and political decision-making, and that this requires fully integrated environmental and developmental decision-making processes. Chapters two, three and four show that the absence of these integrative processes were major contributors to the weaknesses inherent in Tasmania's previous environment protection and planning legislation, and that developing and enshrining these integrative processes in legislation became the principal focus of those responsible for reforming that legislation. This focus is evident in both the policies proposed to underpin the System, and mechanisms, instruments and processes enshrined in the System's legislation to implement those policies. The following section outlines the suggestions in Agenda 21 for integrative decision-making processes.

6.4.2.5 Measures for Restructuring the Decision-making Process

The signatory parties to Agenda 21 saw its implementation as requiring an enormous number of profound and far reaching changes in all strata of industrial society. Central to these changes is the need to integrate environment and development in decision-making. According to Agenda 21, the inefficient and unsustainable activities of all groups in society, including governments, industries and individuals are influenced by decision-making processes that tend to separate economic, environmental and social factors (United Nations 1992b: ch. 8.2). These factors must not only be integrated within the decision-making process, but the consideration of these factors placed at the centre of the economic and political decision-making process. Such a change will involve a fundamental restructuring of the prevailing developmental decision-making process in many countries. Four components of change are proposed

as necessary to achieve this restructuring: integrating environment and development at all levels of policy, planning and management within a uniform decision-making process, providing effective legal and regulatory frameworks, introducing economic instruments and market and other incentives, and establishing systems for integrated environmental and economic accounting (United Nations 1992b: ch. 8.1).

Effective integration of environment into development is seen to require two simultaneous perspectives (United Nations 1992b: ch. 8.3-8.5). It must result in policy, planning and management decisions which not only reflect the views of all government ministries, but also those of government agencies, non-government organisations, and the local communities on whom those decisions will impact. Integration in this vertical sense should bring together decision-making processes which are commonly fragmented and the root cause of inefficient and unsustainable policy, planning and management decisions. Horizontal integration is proposed as equally important. This should result in all decisions reflecting the systematic consideration of all economic, environmental and social factors relevant to development decisions. It is proposed in Agenda 21 that integration be based upon a series of measures which includes adopting a domestically formulated policy framework that reflects a long-term perspective and cross-sectoral approach as the basis for decisions, whilst ensuring transparent and accountable government in relation to the environmental implications of economic and sectoral policies. Policy decisions will need to reflect a performance-based evaluation of development in terms of current economic, environmental and social conditions and trends. Effective public participation in the decision-making process, with full public access to current and relevant information, is seen as essential.

The provision of an effective legal and regulatory framework is seen as one of the most important instruments for transforming environment and development policies into action (United Nations 1992b: ch. 8.13). It is proposed in the action programmes that, to effectively integrate environment and development into policy and practice, it is essential that these frameworks are themselves integrated, enforceable and effective, and that they are based on sound social, ecological, economic and scientific principles (United Nations 1992b: ch. 8.14). Equal importance is also placed upon frameworks for reviewing and enforcing compliance with the laws, regulations and standards at state and municipal levels.

Environmental law and regulation, although crucial, are acknowledged as insufficient to deal with the problems of environment and development. The use of economic instruments such as the polluter pays principle (PPP) and the natural-resource-

user-pays concept is also necessary, in a complementary role, for shaping attitudes and behaviour towards the environment (United Nations 1992b: ch. 8.27). In Agenda 21 it is proposed that three fundamental changes in attitude and behaviour are needed in the pursuit of sustainable development, and that these changes can be encouraged by the use of economic instruments. These changes involve the incorporation of the environmental costs of production within the domain of the producer and consumer rather than displacing those costs onto the broader community or following generations, the inclusion of the social and environmental costs of development into economic activities that adequately reflect the scarcity and value of resources, and the use of market principles to frame economic instruments and policies to pursue sustainable development (United Nations 1992b: ch. 8.31 a, b, & c). It is recognised in Agenda 21 that, to function effectively, these economic instruments need to be founded on accurate assessments of the economic value of natural resources and the waste assimilative capacities of the environment. To these ends it is proposed in Agenda 21 to establish systems for integrated environmental and economic accounting.

The integration of economic, environmental and social factors in the decision-making process, and the provision of law and enforcement and economic instruments are emphasised as imperatives for sustainable development. It is stressed in Agenda 21, however, that these processes can only function effectively with the active participation of the broadest possible representation of the global community. All individuals, groups and organisations must be encouraged to participate not only in the reshaping of the decision-making process, but in all facets of environment/development decisions. Humankind's participation is accepted as fundamental in a sustainable global society, and it is acknowledged that this will not only require radical changes to education, understanding and public-awareness, but access to the decision-making process itself.

6.5 Assessment

Agenda 21 presents a master plan for a global approach to sustainable development, understood as a concept relevant to the development decisions affecting all global economies, societies and environments. In this context the concept refers to economically efficient, socially equitable, and responsible and environmentally sound development. In summary, the Earth Summit confirmed the need for continued economic growth, especially in developing countries, but asserted the need for far greater consideration of the environmental and social consequences in pursuing economic growth (United Nations 1992a). These considerations were regarded as most important in achieving the efficient use of natural resources, the environmentally

sustainable management of hazardous and solid wastes, the protection of the global commons, and sustainable patterns of human settlement.

It is proposed in Agenda 21 that the integration of economic, environmental and social issues in the developmental decision-making process is essential for achieving sustainable development, and recommends a broad range of measures to advance this integration. These measures are underpinned by a domestically determined decision-making process that governs all developmental policy, planning, and management. The decision-making process should not only integrate economic, environmental and social issues in development decisions, but be removed from the sole and narrow confines of economic and political decisions, placing the emphasis instead on people, communities and non-government organisations. To implement this integrated processes it is recommended in the action programmes to establish legal frameworks which will not only guarantee and encourage broad community participation, but ensure transparent and accountable government. In Agenda 21 there is repeated reference to the need for greater knowledge and understanding of sustainable development, and that adequate education and development of the human resource base is required to transform the concept of sustainable development into reality.

The concept of sustainable development that emerged from the Earth Summit has become, through wide international consensus, a global benchmark. It reflects the analyses and recommendations of the Brundtland Report which sought to redress global poverty and environmental degradation through a concept of sustainable development reliant on economic growth. Goodland, Daly and Serafy (1992: xiii) contended that the concept was an inevitable product of two conflicting realisms. Political realism ruled out income redistribution and population stability as difficult, if not impossible, and ecological realism accepted that the global economy had already exceeded the sustainable limits of the global ecosystem. Having determined economic growth as necessary for sustainable development, the leaders of the World Commission on Environment and Development were then torn between operationalising it somewhere between the ineffectual position of growth as usual, but at a slower rate, a scenario that would only delay the inevitable, and the unattainable position of development without growth in throughput beyond environmental carrying capacity (Brundtland 1989). However, neither the purported inevitability of the concept's underpinning by economic growth, nor its operationalising between the ineffectual and the unattainable development paths lessened passionate opposition and criticism.

6.6 Critical Perspectives on the Concept of Sustainable Development

Criticism of the concept of sustainable development has emerged predominantly from outside the economic growth lobby, and for two fundamental reasons. The concept is values based and does not prescribe explicit formulas for desired outcomes. The lack of prescription has resulted, Eckersley (1990) argued, in interest groups tailoring the concept to their own agendas; agendas exemplified in industry seeking 'sustainable economic growth and profits', unions seeking 'sustainable employment', welfare and aid groups seeking 'sustainable health and livelihood', and conservation groups seeking 'a sustainable natural environment and sustainable biodiversity'. Secondly, because the concept has not challenged the conventional economic paradigm (Rees 1990), it has been used to justify the interpretation of sustainable development by decision-makers and industry leaders as a 'business as usual' approach. This approach was clearly endorsed by the Business Council of Australia. The Council asserted that 'sustainable development does not require a radical transformation in the way we live and conduct business, but rather involves endorsing the Federal Government's position that economic growth is essential, continuing to develop our non-renewable resources, correctly managing our renewable resources, and setting and applying appropriate environmental standards (Business Council of Australia 1990: 7).

The coupling of the concept of development with economic growth has been widely questioned. It is accused of perpetuating a narrow and inadequate interpretation of development, one which is relatively new and of Western origins, dating from the inauguration speech of Harry Truman, the President of the United States, in 1947. It is a concept, according to Mercer (1991: 8), that has been used by institutions such as the World Bank to judge nations as either advanced or backward, yet according to Sachs (1990: 43) this idea of development is unquestionably in ruins. Carley and Christie (1992: 41) argued that this coupling led to the habitual and meaningless distinction, based on levels of economic income, between developed and developing countries, and that the mistaken perceptions encouraged by the terminology had contributed to a 'most fundamental loss' for lower income countries involving the 'obstruction of the evolution of indigenous alternatives for societal self-expression and authentic progress'. They argued that there was need for a definition of development that covered all countries on earth with equal applicability. They suggested that it would be more appropriate to define development as a process by which the members of a society increase their personal and institutional capacities to mobilise and manage resources to produce sustainable and justly distributed improvement in quality of life consistent with their own aspirations.

Another important consequence of the alliance of development and economic growth, and one which may well undermine the concept's effectiveness to deliver its intended outcomes, is the fallacy that rapidly increasing global economic output will grant basic human needs, begin to lift some of the world's billions out of poverty, and alleviate the environmental destruction resulting from these circumstances. Anupam Mishra, an Indian environmentalist, has argued that the interpretation of development on the Western scale of 'standard of living' fails to understand the real links between environmental destruction, increasing poverty, and a growing world population (de la Court 1990: 15). He claimed that these circumstances are direct consequences of aspirations to a Western standard of living for everybody, and that this prescription will intensify rather than remedy these problems because it leads governments to sell and degrade their nation's natural assets to the merchants and moneylenders of the West.

Trainer (1991: 195) arrived at a similar conclusion to Mishra, based on the contention that the concept incorporates conventional development theory, a theory which relies upon the assumption that economic prosperity will 'trickle down' and in time solve the problems of the poor. He contended that this assumption has been proven to be incorrect and that 'trickle down' will not solve the poverty in developing nations. He perceived that the real living standards of hundreds of millions are falling because the global economy is denying and depriving them of necessities, whilst allocating most resources and the benefits of development to the rich. Trainer argued that the economic pie does not need, and cannot afford, to be greater. He concluded that justice and equity in distribution of the existing economic pie is all that is necessary.

Goodland, Daly and El Serafy (1992: xv) provided figures that question the capacity of rapidly increasing economic growth to alleviate poverty, and support the idea that poverty, population growth and environmental destruction are intractable problems whilst development remains coupled with economic growth. They contended that an annual three percent global rise in per capita income translates initially into annual per capita income increments (in U.S. dollars) of \$633 for the United States; \$3.60 for Ethiopia; \$5.40 for Bangladesh; \$7.50 for Nigeria; \$10.80 for China; and \$10.50 for India. After ten years, they argued, Ethiopia's per capita income, for example, will have risen by \$41 - an insufficient amount to have any affect on poverty - while that of the United States will have risen by \$7257. These figures suggest that economic growth will not only have negligible effect on alleviating poverty, population growth and environmental degradation in low income countries, but in high income countries will increase consumption and subsequently increase the environmental consequences of the life-styles within developed nations.

There has been a legion of commentators (Ekins 1989, Heuting 1992, Gowdy 1992, for example) who have criticised the prudence in recommending continued and increased economic growth as an avenue to sustainable development, because it will require a throughput of materials and energy that can only result in global environmental calamity - commonly known as the limits-to-growth argument. According to Beder (1993: 17), the argument was supported by many academics in the 1970s, but was later discarded because of the exaggerated claims of imminent disaster and resource depletion that did not occur, and the successful debunking of the argument by well-financed think tanks such as the Hudson Institute. This argument was then replaced, at least in mainstream debate, by the pursuit of ways to achieve sustainable economic growth (or what has become known as sustainability).

The Brundtland Report advocated growth rates of five percent in the developing nations and three to four percent in the developed nations, anticipating a 'five to ten-fold increase in world industrial output by the time world population stabilises some time in the next century' (World Commission on Environment and Development 1987: 50-51, 213). These growth rates were seen as environmentally sustainable if industrial nations could continue to reduce materials and energy needs (World Commission on Environment and Development 1987: 51). Many commentators argue, however, that the necessary reductions in the material and energy content of growth are highly improbable.

Sanders (1993: 136) offered a theoretical view of this likelihood based on the concept of the 'environmental impact coefficient of GNP' (EIC), defined by Jacobs (1991: 54) as 'the degree of impact (or amount of 'environmental consumption') caused by an increase of one unit of national income'. This view suggests that to hold the *present level* of environmental impact constant, it is necessary for the EIC to decrease at the same rate at which GNP increases. To retain the present level of environmental impact while GNP increases at five percent per annum therefore requires the EIC to decrease at five percent. A five percent rate of growth of GNP will double GNP approximately every thirteen years, requiring the EIC to halve every thirteen years. At this rate of growth the exponential progression requires the EIC to reduce to 1/8 of its present impact in 39 years, and 1/16 in 52 years. One cannot imagine that this is plausible.

Sanders also contended that if the resource content of a unit of GNP is to approach sustainability, these levels, because they relate only to the current levels of environmental impact and global population, will need to be reduced much further. If

the current level of environmental impact is accepted as too high, and rapid population growth is expected to continue, the reduction in the EIC to achieve sustainable levels of impact would need to be far greater than the figures quoted above. Furthermore, whilst the growth in GNP continues at an exponential rate, the EIC is required to correspondingly diminish exponentially and, across a period of time, to approach zero. The inevitable conclusion is that, in attempting to deliver intra-generational equity through economic growth, the current international consensus on the concept of sustainable development may be eliminating the possibility of delivering the central principle of the concept - intergenerational equity.

The role of economic growth in the concept of sustainable development is also acutely reliant on the substitution possibilities for environmental resources and services. Substitution is seen as a means to allow the world economy to continue growing without increasing the demand made upon the environment beyond its tolerable limits. Substitution possibilities are themselves dependent on technological innovation, and are believed by many commentators to be highly uncertain. Capital equipment can perform many of the environmental assimilation services through treatment of wastes such as sewage, or the interception or recycling of some wastes. Many wastes cannot, however, presently be recycled. These include carbon dioxide and most metals, whilst paper can only be recycled down the quality scale. Substitution possibilities also suffer from the uncertainty of expectations exceeding promises. Common (1995:45) cited the example of the provision of energy through nuclear fission. An expected inexpensive means of generating abundant energy turned out to be false, in both generating costs and the disposal of radioactive waste.

In contrast to the substitution possibilities available for environmental assimilation services, the possibilities for substituting capital equipment for environmental services that fulfil life support functions are regarded as evermore severely limited. Common (1995: 40) argued that the cessation of human life was not an issue because it could survive in artificial environments, although not in terms of the quantity or quality enjoyed today. In terms of substituting for life support functions, however, it was highly uncertain what environmental costs would be necessary, because the problem itself changes over time as the result of economy-environment linkages, and their repercussions in human society. For example, the effects of increased ultra-violet radiation on food production could be compensated with artificial growing environments, but the environmental costs, the cost of the produce, and ultimately, the number of people such environments could support, are all uncertain. Costanza (1992: 111) claimed that, given our high level of uncertainty, it is irrational to bank on technology's ability to ultimately remove all resource constraints to continued economic

growth. If we do and we are wrong, the result could be the disastrous and irreversible destruction of our resource base and civilisation itself.

Another factor that poses significant obstacles to the adequacy of the concept of substitution in achieving sustainable development outcomes is that substitution, in a market economy, is driven by micro-economic costs rather than the macro requirements of sustainability. These micro-economic costs far from guarantee sustainability, and may in fact intensify unsustainability. According to Baines and Peet (1992: 84), substitution occurs when the cost of a resource rises due to its decline in quality or accessibility, and becomes greater than the cost of an alternative resource. For example, there are greater resources of recoverable reserves of coal than of oil and natural gas, and any perceived scarcity of oil and gas will potentially lead to another era of coal development - a resource that contributes far greater quantities of carbon to the environment.

The reality that substitution is driven by market forces has been emphasised by Zucchet (1997), an economist with the United States National Energy Information Administration. He claimed that the deregulation and restructuring of electric generation is not only requiring generating utilities to compete more heavily on price in the short term, but diminishing their flexibility to experiment with new or unproven technologies, including renewables. The result is limiting investment in renewable electricity generation because the costs remain higher than traditional generating means, and reducing research investment to lower the costs of renewable electricity generation. According to Zucchet, the future for renewable energy is uncertain.

The proposal for the broad use of environmental accounting as a means to employing market principles in the pursuit of sustainable development outcomes (United Nations 1992b: ch. 8) has also generated considerable criticism. Environmental accounting involves translating environmental resources and services into economic values. It is proposed that the environmental costs of production and consumption in terms of resources and services used can be internalised through mechanisms such as the polluter pays principle (PPP) and the natural-resource-user-pays concept. Development proposals can be assessed on an environmental cost/economic benefit basis, and natural capital assets can be incorporated into the traditional system of national economic accounting in order to pursue national sustainable development outcomes.

It is widely accepted that monetary values can be placed on circumstances such as production foregone because of environmental damage, the value of earnings lost through health problems associated with air and water pollution, health-care costs because of pollution, and the value of decreased growth and lowered quality of crops because of soil degradation. Beder (1993: 47) argued, however, that direct monetary costs tend to underestimate the real costs and benefits provided by the environment. For example, a healthy population resulting from a clean and safe environment is worth more than just reduced health-care costs, and undegraded rivers are of greater value than just the fitness of their fish for human consumption. Neither do direct costs measure the values that people put on the environment in terms of 'use' value, nor in terms of 'existence' value, that is, the value which entails 'concern for, sympathy with and respect for the rights or welfare of non-human beings' (Pearce, Markandya & Barbier 1989: 61). Although economists are developing models for assessing 'use' value, according to Beder (1993: 48), the question of 'existence value', that is, whether birds, animals or ecosystems have any value outside their use to humans, is a philosophical question on which environmentalists and economists cannot yet agree.

Using environmental accounting to incorporate natural capital assets into the traditional system of national economic accounting in order to pursue national sustainable development outcomes has, however, perhaps the most far reaching consequences. It is here that the issues of market economics and substitution are combined in the pursuit of inter-generational equity - a principle pivotal to achieving sustainable development. Tietenberg (1994: 27) and Common (1995: 46) contended that the most common economic theory approach to intergenerational equity is via the sustainability criterion. Pearce explained this theory as the substitution of human-made for natural capital in order to compensate future generations for the exploitation of non-renewable resources, and that the theory is seen by economists to represent the retention of constant capital stock. This theory, to which Pearce subscribes, is based on the Hartwick Rule that decrees that by investing all the rental (the difference between the selling and extraction costs) from the exploitation of a finite resource, future generations can enjoy a constant stream of consumption over time (Pearce 1989: 48-52). He did, however, highlight the problems in doing so. They include the possibility of improving the present generation's welfare at the cost of the following generations', not knowing how far into the future to calculate inter-generational equity, and that present well-being may not be consistent with humankind's long term welfare or even survival.

To pursue inter-generational equity in this manner undoubtedly requires accurate translation of environmental to economic values, and that substitution of social and cultural for natural capital provides unambiguous and indisputable welfare benefits

for the following generations. Tietenberg (1994: 28), in contrast to Pearce, contended that it is accepted by ecologically oriented economists that the two types of capital have limited substitution possibilities and that they are complementary rather than interchangeable. He argued that the limitations exist because natural capital can be differentiated into 'critical' (such as is essential for sustaining both human and non-human life) and 'other' (such as minerals) capital. Whilst critical capital must be preserved intact, other forms of natural capital remain open to the possibility of substitution. He asserted, however, that because of inadequate knowledge of what is and is not 'critical' capital, the boundary between the two remains subjective and unsatisfactory. Tietenberg also criticised the criterion for substitution, claiming that it lacks clarity on the issue of population growth. Determining and meeting the needs of future generations is obviously much more difficult if the population is large and unknown, and there is no level of population implied within the sustainability definition. Common (1995: 48) contended that although these uncertainties in substitution possibilities exist, standard economic thinking, which does not and cannot empirically resolve the extent of those substitution possibilities, continues to use substitutability as a central tenet. Furthermore, he claimed that the Hartwick Rule is a mathematical parable rather than an empirical proposition. Substitutability is necessary but not sufficient for sustainability because too little is known about its possibilities.

These criticisms will have profound ramifications on the internationally agreed position on sustainable development to the degree that they are supported by the outcomes following the concept's implementation. Should these criticisms be upheld, their major ramification would be to remove the justification for pursuing economic growth as a means to achieving sustainability. Such failure of the benchmark would manifest in the systemic impotency of economic growth to address poverty and population growth in lower income nations, an inability to attain the level of efficiency in global resource use and waste production necessary to offset the environmental degradation from continued economic growth, and the underlying problem of indomitable consumerism fuelled by high incomes continuing unabated. In addition, continued economic growth would further widen the economic chasm between high and low income nations, a ratio of per capita income which increased from 30:1 in 1960 to 61:1 in 1991 (Worldwatch Institute 1996: 4), creating the need in low income nations for ever greater levels of revenue. Poverty and population growth would increase and, combined with the financial limitations of low income nations precluding their use of best practice technology in the pursuit of economic growth, would also intensify, rather than ameliorate, the rate of environmental degradation. There is also the potential that ardent adherence to the concept may produce irreversible environmental, ecological and social consequences before the concept's environmental and social outcomes are seen to

contradict irrefutably its theories of sustainability through economic growth, and the technologically innovative substitution of human-made capital for natural resources and environmental services.

Despite these criticisms, the concept of sustainable development set by the Brundtland Report and the Earth Summit remains comprehensive and current, and constitutes the greatest level of international agreement for principles, objectives and means with which to redress the environmental consequences of current development practices. Such circumstances clearly necessitate acceptance of the concept as the current benchmark of sustainable development, and demand its incorporation into legislation designed to achieve sustainability. Such circumstances also clearly validate using the benchmark, or those aspects of it considered reasonable and appropriate, to assess attempts such as those in Tasmania, to enshrine the concept in legislation. Furthermore, rather than these criticisms, which strike at the concept's fundamental premises, diminishing its validity, they make it imperative, given the dire urgency for a concept that will deliver sustainability, that the concept is tested by its full and immediate global implementation.

6.7 Conclusion

The state and government leaders of 98 percent of the world's people jointly agreed at the Rio Conference on Environment and Development on a set of principles, objectives, and mechanisms to achieve sustainable development. This concept is, irrespective of the criticisms levelled at its efficacy, a holistic vision for achieving intergenerational equity that embraces the problems associated with development pathways, the characteristics of sustainable pathways, and the transition from the former to the latter. To overcome these problems the Earth Summit unambiguously articulated the need for a global cultural shift in policy and planning - especially in industrial countries, due to their significantly disproportionate impact on the environment as a result of poor production efficiency and extravagant consumption patterns.

This cultural shift fundamentally requires a maximised level of integration of environment and development in all decision-making processes. The level of integration will be maximised by all developmental policy, planning and management decisions incorporating the opinions and perceptions of all individuals (from government ministries to local community), whilst simultaneously taking into consideration all economic, environmental and social issues relevant to development. To function successfully, integration will need to be supported by effective legal and regulatory frameworks which encourage community participation. Most importantly,

communities must be educated to recognise and understand developmental issues, and to relate confidently to the legislation governing resource management systems.

Tasmania's reform process, from very uninspired beginnings, and subject to a legion of pressures and influences, evolved towards incorporating this concept in legislation. The System's objectives provided a resource management and planning system that incorporated the fundamental principles of the benchmark. These fundamentals, combined with the potential for the implementation of the System's underlying policies, as chapter five shows, provided significant potential for the System to facilitate sustainability in Tasmania. In the following chapter I undertake a detailed assessment of this potential.

Chapter Seven

Towards Sustainable Development?

7.1 Chapter Outline

Preceding chapters have highlighted the focus on aligning the System's objectives with principles of sustainable development, and constructing a system for implementing policies for integrating environment and development in decision-making. Initial assessment of the System's objectives suggests that they embraced the fundamental principles of the benchmark for sustainable development considered relevant to Tasmania, whilst the System's policies are shown to not only reflect many of the key decision-making proposals appearing in Agenda 21, but to have significant potential to be translated into practice. This chapter provides a detailed assessment of the extent to which Tasmania's Resource Management and Planning System incorporated the principles of sustainable development argued by the author to be relevant to Tasmania, and its potential to achieve the desired outcomes.

There is an urgency to implement (a concept of) sustainable development in order to halt the continuing degradation of natural resources. This urgency is intensified by sweeping criticisms that the basic tenets of sustainable development cannot deliver sustainability. Only experience will reveal where those criticisms are justified, and allow for a more effective approach to be instituted. The Tasmanian Government has undertaken to embrace the current concept, and has constructed a system with major strengths and, arguably, some serious weaknesses. Its experience in pursuing the concept will, to some degree, benefit others with a similar intention, and therefore I conclude the thesis with a discussion of the lessons that have emerged from this experience.

7.2 Tasmania's Response to the Benchmark Principles of Sustainable Development

The international benchmark principles for sustainable development relevant to Tasmania are discussed in chapter 6.3.2. It will be recalled that these principles consist of: intergenerational equity, economic growth, public participation, reducing and eliminating unsustainable patterns of production and consumption, effective

environmental legislation, environmental impact assessment, precaution, and the internalisation of environmental costs through economic instruments. Most of the principles are explicitly enshrined in the legislation governing Tasmania's System, either in its overarching objectives (Schedule 1), the supplementary objectives to Schedule 1 in the *Land Use Planning and Approvals Act 1993* and the *Environmental Management and Pollution Control Act 1994*, or within its governing provisions. The remainder, however, are only implicit within the System, leaving their implementation tenuous. The enshrining of these principles in legislation is the System's fundamental strength, for it imposes a mandatory requirement on all the System's decision-making bodies to promote those principles. This strength is diminished only by the lack of definition of the objectives inherent in the concept of sustainable development. The principles of the Rio Declaration on Environment and Development judged relevant to Tasmania, and an assessment of their incorporation within the System follow in Sections 7.3.1 - 7.3.8.

7.2.1 *Development Must Equitably Meet the Developmental and Environmental Needs of Present and Future Generations - Principle 3*

The fundamental objective of Schedule 1 is to promote sustainable development. This is defined in Clause 2 as 'managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being, and for their health and safety'. Central to this objective is the need to 'promote the maintenance of ecological processes and genetic diversity, ... the provision of a fair, orderly and sustainable use and development of air, land and water, ... the maintenance and safeguarding of the life-supporting capacity of the air, water, soil and ecosystems (cl. 1a, b), and the avoidance, remediation or mitigation of any adverse effects of activities on the environment' (cl. 2c). These objectives must be met not only while providing for the needs of the present generation, but also for the 'reasonably foreseeable needs of future generations' (cl. 2a).

Although this is one of the most comprehensively represented principles of the benchmark, the interpretation of the principle due to its inherent broadness, in conjunction with the System's lack of prescriptive goals, holds the potential to create significant tensions between the weight given to the management and protection of the natural environment versus the economic benefits from its development. This is discussed in the conclusion to this section.

7.2.2 *Economic Growth as a Precursor to Sustainable Development - Principle 12*

Economic development is a fundamental objective of the System. It is to be facilitated according to the definition of sustainable development appearing in Schedule 1 (cl. 2), and in accordance with the maintenance of ecological processes and genetic diversity, the fair, orderly and sustainable use and development of air, land and water, and public involvement in resource management and planning (cl. 1a, b, and c). As intimated in the preceding principle, however, the System's objectives are subject to significant tensions concerning the weight to be given to the economic benefits of development versus its environmental and social consequences.

7.2.3 *Public Participation - Principle 10*

Public participation is a principal component of most resource management and planning decision processes within the jurisdiction of the System. Schedule 1 explicitly encourages public involvement in resource management and planning (cl. 1c), whilst also promoting shared responsibility for resource management and planning among the different spheres of government, the community and industry (cl. 1e). Participation rights exist not only in all development-approval processes, but also in enforcement processes through civil enforcement rights where breaches of the Acts, licences, or license conditions are suspected. The right of public participation is not intended to be a hollow gesture. It is to be supported by the availability of relevant information and effective access to the administrative and judicial processes relevant to planning and development decisions.

The single, but probably most important area where public participation could be and, is denied, however, concerns projects of State significance. Declaring a proposed development as a project of State significance and determining the conditions to be attached to a licence for such a development to proceed are solely political decisions. Furthermore, all appeal rights applicable to other development processes within the System are denied for development proposals classified as Projects of State Significance. Although these projects are subject to an integrated assessment which is obliged to further the objectives of Schedule 1, to be in accordance with State policies, and to take into consideration any public representations concerning the draft integrated assessment which is to be publicly exhibited, they are essentially 'fast tracked' through consecutive stages of political decision-making. The only recourse available to those critical of a government's handling of projects of State significance is to attempt to replace them at (the four-yearly) State government elections. This is arguably unacceptable and ineffective, because neither major developments nor their environmental legacies can simply be terminated with a change of government. Not

only does the legislation encourage public participation and community responsibility for resource management and planning, but the supplementary objectives (although these have been afforded much less importance than the System's core objectives) to the *Environmental Management and Pollution Control Act 1994* (Schedule 1, Part 2, cl. 3j) also require public education concerning the protection, restoration and enhancement of the environment.

7.2.4 *The Reduction and Elimination of Unsustainable Patterns of Production and Consumption - Principle 8*

The principle of reducing and eliminating unsustainable patterns of production appears only by interpretation in Schedule 1, although it appears explicitly in the supplementary objectives to Schedule 1 in the *Environmental Management and Pollution Control Act 1994*. The Act requires the prevention of 'environmental degradation ... by promoting pollution prevention, clean production technology, the reuse and recycling of materials, and waste minimisation programmes' (Part 2, cl. 3b). In addition, the supporting objectives require that 'persons engaging in polluting activities make progressive environmental improvements ... as such improvements become practicable through technological and economic development' (Part 2, cl. 3e). The principle also appears in the Act's concept of best practice environmental management, defined within its provisions as the management of an activity 'to achieve an ongoing minimisation of the activity's environmental harm through cost-effective measures assessed against the current international and national standards applicable to the activity' where the factors involving best practice environmental management are stated as strategic planning and administration, public consultation, product and process design, and waste prevention, treatment and disposal (Section 4).

Although the legislation addresses the need to reduce and eliminate unsustainable patterns of production, explicit reference to unsustainable patterns of consumption is absent. Gunter (pers. comm. Nov. 1997) contends, however, that this principle may be interpreted in the supplementary objectives to Schedule 1 in the *Environmental Management and Pollution Control Act 1994* (Part 2, cl. 3d) which requires the allocation of the 'costs of environmental protection and restoration equitably and in a manner that encourages responsible use of, and reduces harm to, the environment'.

7.2.5 *Effective Environmental Legislation - Principle 11*

Invoking the Concise Oxford Dictionary's (1976) definition of effective as 'actually useable' to achieve intended outcomes, the System's legislation has the potential to be extremely effective. Its 'useability' is derived from the scope of its statutory objectives, the principles of sustainability which can be incorporated within decisions by the System's administrative bodies allowed by those objectives, and the influences which can be exerted by the community on those decisions through its participatory rights in the development process, including those of appeal and enforcement. The System's potential effectiveness is substantially diminished, however, by its restricted jurisdiction. These restrictions comprise approximately sixty percent of the State's land area consisting mainly of National Heritage Areas, National Parks, State Forests under the jurisdiction of the Forestry Corporation, and areas of State Forests under reference to the Public Land Use Commission (incorporated in 1997 within the new Resource Planning and Development Commission) for determination of their future uses. In addition the System has no jurisdiction over development on private land declared as a private timber reserve, mineral exploration, or activities on land belonging to the Federal Government. Although also initially without jurisdiction over fishing and marine farming, the System now has partial jurisdiction over these activities because of fisheries legislation (the *Living Marine Resources Management Act 1995* and the *Marine Farming Planning Act 1995*) adopting the System's objectives and, with the latter Act, also its appeal and enforcement mechanisms.

It is prudent to recognise that the legislation's actual effectiveness is subject to many and diverse factors. Foremost of these is an adequate level of awareness and understanding of the System and its objectives by the public and those implementing the System. Another crucial factor in the System's effectiveness is the political commitment to sustainability. This commitment is most important in circumstances such as the number and quality of State policies initiated by the State government, the extent to which state of the environment reporting recommendations are incorporated within State policies, and the level of resourcing for environmental issues. These factors, especially concerning the development of State policies, became important issues during the System's first three years of operation and are discussed in detail in chapter 9.3.

7.2.6 *Environmental Impact Assessment - Principle 17*

Although the requirement for environmental impact assessment exists in the objectives only by interpretation, it is a mandatory and integral component of the development approval process for the System's three levels of development activity, and the mechanism by which the System can be used to integrate environment and

development. Assessment of Level 3 activities (projects of State significance) and Level 2 activities (those activities legislated as environmentally relevant) is mandatory. Assessment of Level 1 activities (those activities classified in planning schemes as 'permitted') is at the discretion of local government, or when directed by the Director of Environmental Management, to be undertaken by the Board of Environmental Management and Pollution Control. The responsible authority must assess the proposed development in accordance with the environmental impact assessment principles laid down in the legislation. These require that the level of assessment is appropriate to the degree of significance of the proposed activity on the environment, and the likely public interest in the proposed activity. Public consultation, supported by the public availability of all information not commercially, environmentally, or for national security reasons, confidential, must be undertaken before the assessment process is completed.

7.2.7 *The Precautionary Principle - Principle 15*

The precautionary principle is explicit only in the supplementary objectives of the *Environmental Management and Pollution Control Act 1994* (Schedule 1, Part 2, cl. 3h) which require that a precautionary approach is taken when 'assessing environmental risk to ensure that all aspects of environmental quality ... are considered in assessing and making decisions in relation to the environment'. A noteworthy inclusion in this clause is that the precautionary approach is to be applied when assessing the beneficial uses of the environment, that is, that a particular use for a natural resource is the best possible use for that resource. For example, there must be conclusive proof that a community's interests are best served by woodchipping its forest resource rather than selectively logging the forest resource for high grade furniture timber, or preserving the forest for its tourist potential, ecological importance or life-supporting role. Furthermore, it must be proven to be in the community's best interests to export those woodchips rather than to process them in Tasmania.

In the Rio Declaration on Environment and Development it is asserted that where there are 'threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation' (United Nations 1992a: principle 15). In this respect the legislation is silent.

7.2.8 *The Internalisation of Environmental Costs Through the Use of Economic Instruments - Principle 16*

The Rio Declaration on Environment and Development embraces the principle of internalising the environmental costs of production and the environmental and social costs of development through the use of economic instruments. According to Agenda 21 this principle is intended to encourage a change in attitudes and behaviour that would place the environmental costs of production (particularly pollution) on the producer and consumer, locate the economic value of the social and environmental costs of development (particularly resource consumption both industrially and domestically) within the economics of development activities such that they reflect the value of the resources they consume, and link the use of these economic instruments to market principles. The economic instruments proposed for internalising the environmental costs of production and the environmental and social costs of development were, respectively, the polluter pays principle (PPP) and the natural resource-user pays concept, instruments which directly link this principle to that of reducing or eliminating unsustainable patterns of production and consumption (Section 7.3.4).

The principle of internalising the environmental costs of production through the use of economic instruments appears only by interpretation in the System's overarching objectives, but the internalisation of pollution costs is explicit in the supplementary objectives to Schedule 1 in the *Environmental Management and Pollution Control Act 1994* (Part 2, cl. 3d) which requires that polluters bear the appropriate share of the costs arising from their activities. The principle of internalising the environmental and social costs of development is absent from Schedule 1, and there is no statutory instrument for even vaguely implementing the principle. Gunter (pers. comm. Nov. 1997) argues, however, that the principle may be interpreted in the supplementary objectives to Schedule 1 in the *Environmental Management and Pollution Control Act 1994* (Part 2, cl. 3d) because the clause requires allocating the 'costs of environmental protection and restoration equitably and in a manner that encourages the responsible use of, and reduces harm to, the environment'.

7.3 **Assessment**

All the benchmark principles of the Rio Declaration on Environment and Development I consider relevant to Tasmania are incorporated within the Tasmanian Resource Management and Planning System. They appear either explicitly or by interpretation in the main body of objectives or the supplementary objectives to the environmental management or land use planning Acts, or as a mandatory requirement within the provisions of those Acts. Their differing levels of incorporation, that is,

whether appearing explicitly or by interpretation, or as a mandatory process, can be expected, however, to determine their influence on the System's outcomes. In this context, the role of EIA, as a mandatory development-approval instrument, and public participation, as mandatory processes in the development-approval process, will be considerable. In contrast, the principle of reducing and eliminating unsustainable levels of consumption, which is incorporated only through generous interpretation in the System's supplementary objectives, and for which the System contains no economic instrument, can be expected to exert negligible effect. Somewhere between these two extremes will be the influence of the precautionary principle and the reduction and elimination of unsustainable patterns of production. The principle of economic growth will undoubtedly continue to be pursued irrespective of its incorporation within the System.

Fundamental to the concept of sustainable development is the principle of intergenerational equity. Although the incorporation of this principle is explicit within the System's objectives, suggesting its influence on the System's outcomes could be considerable, it is beset with the problems of interpretation inherent within the principle. The problems arise because the concept of sustainable development, being a means to, rather than an end in itself, cannot prescribe the necessary balance between the management and protection of the natural environment versus the economic benefits from developing that environment. This problem is stark throughout Schedule 1. For example, in Clause 2 an inevitable conflict exists between peoples' social and cultural well-being and their health and safety in environmental terms, and their economic well-being. A similar conflict exists between the development and protection of physical resources, and the natural resource needs of future generations (cl. 2a) and the safeguarding of the life-supporting capacity of air, water, soil and ecosystems (cl. 2b) for both present and future generations. Clause 2c only serves to intensify this conflict by offering a choice of avoiding, remedying or mitigating adverse effects on the environment, for in so doing it imposes both a duty to avoid adverse environmental effects, yet allows the environment to be adversely affected so long as the effects are mitigated or cleaned up. Other clauses within Schedule 1 can also be seen to add to these tensions. There are many perspectives on what could be considered fair and orderly development (cl. 1b), on what could be considered healthy and safe and according to whom (cl. 2), and to what level and according to what standards the life supporting capacities of air, water, soil, and ecosystems are to be maintained and safeguarded (cl. 2b). Because of these problems the influence of the intergenerational principle on the System's outcomes is dependent on factors such as the content of State Policies and the Appeal Tribunal's understanding of the concept of sustainable development.

These problems with interpretation are compounded by legislation which fails to offer any prescriptive goals against which to measure the success or otherwise of the System's processes. As Bates (1995) claimed in his address to the National Law Association, 'the System lacks a policy vision in that there is no vision of what is required to be achieved from the System in ten years time'.

Throughout Agenda 21 the ability to transcend this conflict and thus to deliver sustainable outcomes is seen to depend heavily on the remaining principle; effective environmental legislation. In broad terms this has concerned integrating environmental factors into policy-making, law and economic instruments. It is suggested in Section 7.2.5 that this principle is firmly embedded within the legislation. The following section examines the potential for using the System to implement the decision-making processes seen as necessary to achieve this integration. This examination is undertaken because the assessment (in Section 7.6) of the System's potential to facilitate the benchmark objectives requires, in addition to an analysis of its incorporation of the benchmark principles, an analysis of its incorporation of these integrative components.

7.4 Integrating Environment and Development in Decision-making

It is proposed in Agenda 21 that specific measures which integrate environment and development in the decision-making process are imperative to achieving the objectives of the benchmark principles of sustainable development. These measures, discussed in chapter 6.3.1.5, have three fundamental components: (i) the integration of environment and development at all levels of policy, planning and management within a uniform decision-making process, (ii) the provision of an effective legal and regulatory framework, and (iii) the use of economic instruments for shaping attitudes and behaviour towards the environment.

7.4.1 *Integrating Environment and Development at all Levels of Policy, Planning and Management*

It is claimed in Agenda 21 that fundamental to the pursuit of sustainable development is the integration of environment and development at all levels of policy, planning and management within a uniform decision-making process. The principal objective is to establish a decision-making process where the consideration of the socio-economic and environmental issues of development are fully integrated, and public participation assured (United Nations 1992b, ch. 8.3). It is considered necessary that integration be supported by a series of measures consisting of: a domestically

determined policy framework that reflects a long-term perspective and cross-sectoral approach to decisions; transparent and accountable government in respect of the environmental implications of economic and sectoral policies; performance-based policy decisions informed by current economic, environmental and social conditions and trends; and guaranteed public participation in the decision-making process.

The System's incorporation of these measures, and consequently its potential to integrate environment and development at all levels of policy, planning and management is significant. This potential is fundamentally derived from the statutory obligation for all policy, planning and management decisions to promote the System's overarching objectives as well as the supplementary objectives within the land use planning and environmental management and pollution control Acts. This potential is substantially strengthened by statutory requirements for uniform policy, planning and management decision-making processes which clearly articulate the roles, responsibilities and time frames for those involved in the processes. Primarily, this uniformity has been achieved by statutory consolidation and rationalisation of processes which under the previous pollution control and land use legislation were acutely fragmented.

The integration of environment and development in policy, planning and management is to be achieved in practical terms through a hierarchical series of planning instruments comprising (i) Tasmanian sustainable development policies (State policies), (ii) regional strategic planning, (iii) local government strategic plans, and (iv) planning schemes. It is envisaged that these instruments will fully integrate environment and development by establishing a broader concept of planning than existed in the statutory planning scheme under the previous legislation, particularly because the concept is highly dependent on uniform decision-making processes. The overall approach to planning is to enable strategic and environmentally sensitive planning to provide direction and a framework for statutory land use planning.

State policies are the System's fundamental policy mechanism and represent the System's principle determinant for the direction of development. The integration of environment and development in State policies is to be achieved by placing responsibility for the assessment of State government initiated draft policies with the Sustainable Development Advisory Council (now incorporated in the Resource Planning and Development Council). The Advisory Council is required, in accordance with statutory provisions, to undertake a broad consultation process with all relevant government agencies and the public before submitting its policy recommendations to

the Minister who in turn must submit them for Parliamentary approval. As the System's principal determinant for the direction of development, State policies must be incorporated, where relevant, within all subservient planning instruments.

State policies are first and foremost intended to inform regional strategic planning. The requirement for strategic planning appears in the supplementary objectives to the *Land Use Planning and Approvals Act 1993* (Schedule 1, Part 2a, d) which calls for 'sound strategic planning and co-ordinated action by State and local government', and for 'land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels'. There is, however, neither a legislated mechanism with which it can be established or supported nor, according to TBA Planners (1996: 30), in a report commissioned by the State Government to identify and detail a set of planning instruments best suited to the System, any regional structure of government to provide clear jurisdictional boundaries for regional policy and strategy. Moreover, TBA Planners considered that regional policy and strategy would be difficult to establish comprehensively and consistently across the State because of the new organisational structures and co-ordination mechanisms which would have to be established, and the considerable amount of resources such an approach would consume. The absence of this mechanism is discussed more fully in chapter 9.3 in relation to the lessons that have emerged during the System's implementation.

State policy provisions and regional planning strategies should flow through to local government strategic plans. These plans, established under the *Local Government Act 1993* (Section 66), must be developed every five years, and reviewed annually. They provide a key instrument for how Municipalities assess their local resources in the wider State context. This assessment and the direction given to the management of those resources is to provide the fundamental rationale for Councils' planning schemes. Local government strategic plans are intended to be more than a corporate plan, and should encompass social, environmental, economic and financial objectives, policies and programmes (Haynes 1996: 6). In addition to the integration of environment and development in local government strategic plans by their incorporation of State policy and regional planning strategies, integration is also ensured through their development process which requires broad community consultation and the incorporation of community opinion and sentiment. These characteristics closely resemble those of a 'local Agenda 21'¹, a provision claimed in Agenda 21 to be a

¹The involvement of each local authority in consultation and consensus-building with its citizens, local organisations and private enterprises to formulate the best strategies for constructing, operating and maintaining economic, social and environmental infrastructure, for establishing local environmental

'determining factor' in achieving its objectives (United Nations 1992b: ch 28.1). The substitution in interpretation of local government strategic plans for local Agenda 21s appears particularly appropriate given the importance placed on them at the Rio Conference and because the Federal Government has encouraged their implementation through initiatives such as the funding of a local Agenda 21 manual (Municipal Conservation Association 1994).

Although local government strategic plans are obliged to reflect State policies and to incorporate relevant regional planning strategies, there is a degree of incongruity in that their development is governed by the *Local Government Act 1993* which is not a legislative component of the System, nor does it directly contain any obligation to promote Schedule 1. Despite this incongruity, TBA Planners (1996: 30) contend that local government strategic plans are potentially one of the more significant instruments within the System, although at present their incorporation of resource management and planning issues is inconsistent: one of the consequences of a general lack of specific guidance on the format and content of strategic planning inherent in the System.

The final planning instrument used to integrate environment and development is the planning scheme. It is the principal delivery mode of State policies, regional strategic planning and local government strategic plans, and as the System's key integrative and regulatory instrument, it is the means by which sustainable development objectives and State policies are given effect. The integration of environment and development in planning schemes, as with the development of State policies and local government strategic plans, is supported by an obligatory consultation process, and the requirement for the public's attitudes towards future environment and development issues to be considered when the Land Use Planning Review Panel authorises a planning scheme's final format.

The integration of environment and development in 'management' of the areas within the System's jurisdiction is primarily achieved through the interconnectedness of the System's planning instruments. In this respect, State policies, regional planning strategies, local government strategic plans, and planning schemes all require specific management outcomes. Complementing this top-down management approach is the bottom-up approach which occurs at the point of the mandatory assessment of individual development proposals for development permits. This assessment involves and includes the community's right to participate in an assessment of the economic,

policies and regulations, and for implementing national and sub-national environmental policies (United Nations 1992b: ch. 28).

environmental and social consequences of the proposed development. The community's sentiments must be taken into account in the final decision, with the right of appeal for those who feel that consideration to have been inadequate.

All development proposals, except for those declared as projects of state significance, considered to have the potential for creating 'environmental harm' require development permits granted by local government. These permits must only be granted for development proposals conforming to planning scheme provisions, and after an appropriate level of EIA has been undertaken to determine the necessary conditions for the permit. The System's management potential is enhanced by the requirement for all development proposals needing development permits to be publicly exhibited, and for public submissions to be accepted and considered by local government, or the Board of Environmental Management and Pollution Control, or both, in their decision to refuse or grant, or the conditions or restrictions they attach to, a permit. Furthermore, these decisions may be appealed to the Appeal Tribunal by either the developer or those contesting the development or both. Proposed developments declared as projects of State significance, although becoming the responsibility of the State government and therefore largely political decisions, must nevertheless conform to the System's objectives, all relevant State policies and planning schemes, and must undergo comprehensive impact assessment and extensive public consultation. In respect of projects of State significance, however, there are no avenues for appeal.

Management of the State's environment is also supported by state of the environment reporting. These reports must contain an assessment of existing environmental conditions and recommend future management directions for all areas of the State, even those (State Forests under the management of the Forestry Commission, private timber reserves and the marine environment) excluded from the System's jurisdiction. The role of state of the environment reporting in environmental management is evinced in the 1996 State of the Environment Report (Sustainable Development Advisory Council 1996b, 1997) which contained recommendations to develop State policies governing water resources management and rural land use. These recommendations have to-date eventuated in the *State Policy on Water Quality Management 1997* and the *Draft State Policy on the Protection of Agricultural Land*. Although the 1996 Report also recommended the insertion of Schedule 1 into statutes governing forestry practices, National Parks and Wildlife, local government, and mineral resources and development, these recommendations have not been acted upon.

7.4.1.1 A Domestically Determined Policy Formulation Framework

The requirement for a domestically determined policy formulation framework to support the integration of environment and development in policy, planning and management, as proposed in Agenda 21, was unequivocally fulfilled. As chapter four documents, the System's framework for policy formulation emerged from a broad domestic consultation process, and incorporates many of the requirements unearthed during that process. The provisions governing the integration of environment and development in policy formulation did not, however, escape a degree of political intervention, especially by the Liberal Government. This intervention, because it gave the executive branch almost total control over certain aspects of development, has led to weaknesses in both the System's planning framework and its implementation. One warrants mention. Under the *State Policies and Projects Act 1993*, draft State policies may only be initiated by government Ministers, whereas the Labor Government's *Environmental Management and Planning Commission Bill 1991* empowered the System's peak administrative body to request any government agency to prepare, or to itself initiate, a draft policy based on its perceived need for such a policy. The consequence (discussed in chapter 9.3) has been that government inactivity has resulted in a dearth of State policy and created a significant planning vacuum in the State.

7.4.1.2 A Long-Term Perspective

The intergenerational component of Schedule 1 requires that all decisions made by the State Government and the System's administrative bodies reflect a long-term perspective. This requirement is supported by the capacity for recommendations from state of the environment reporting to be incorporated in State policies governing planning and management decisions. The support is limited, however, by the absence of a statutory mechanism and obligation to incorporate these recommendations in State policy, and by the limited scope of the reports which are confined by statute to an environmental focus - thus excluding economic and social issues. In addition to these limitations, use of the System to arrive at decisions with a long-term perspective is also diminished as a consequence of the areas excluded from its jurisdiction. In this respect the System provides no statutory authority over the development of State Forests, private timber reserves, mineral exploration, or over the use, and in many instances the protection of the marine environment.

7.4.1.3 A Cross-Sectoral Approach to Decisions

A cross-sectoral emphasis in decision-making is proposed in Agenda 21 as another important facility for integrating environment and development in policy, planning and management. In 1992 the Commonwealth Government established the

Ecologically Sustainable Working Groups to plan for an 'ecologically sustainable development (ESD) process' for Australia (Australia 1991, Australia 1992). These working groups were to explore the implications of ESD in relation to major economic sectors, and their intersectoral and cross-sectoral issues. The principal sectors were seen as agriculture, energy production and use, fisheries, forest use, manufacturing, tourism, mining and transport. Intersectoral issues were seen as those which spanned most or all sectors, and the Working Groups considered the major issues to be biodiversity, global environment change, public health, population, waste disposal and recycling, urban issues, coastal management, and air, land and water issues. Cross-sectoral issues were defined as those which 'possessed linkages between one sector and another that might have ramifications for both' (Australia 1992: v). Competition for land, land management, marine problems, waste minimisation and recycling, and chemical use were seen as the main issues.

Using the System's potential to address these cross-/intersectoral issues as a measure of its potential to facilitate cross-sectoral decision-making, I believe that the System has major strengths and weaknesses. Its major strengths are a consequence of its processes for integrating development and the environment either obliging or providing the facility for cross-sectoral consultation in most development decision-making. The cross-sectoral approach provided by the System functions in two spheres. Most development decisions, whether concerning policy, planning, management or development approval, either: oblige the relevant authorities to seek cross-sectoral consultation, for example, in the development of State policy and during impact assessment for proposed developments; or provide the facility for cross-sectoral consultation in situations such as when developing planning schemes. Secondly, the cross-sectoral administration of environment and development is achieved through the integration of planning and environmental management within a single development-approval process. These two spheres allow for the majority of the cross-/intersectoral issues noted above to be addressed. For example, the intersectoral issues of public health, waste disposal and recycling, urban issues, and air and land issues may be comprehensively covered. Coastal management is addressed, but less comprehensively, whilst the cross-sectoral issues of competition for land, land management, waste minimisation and chemical use are central to the System's development control mechanisms.

The weaknesses in the System's potential to facilitate cross-sectoral decision-making exist primarily because of the System's limited jurisdiction. In this context, where the issues of biodiversity, global environment change, and water and land management relate to State forests or private timber reserves the System is largely

ineffectual. This is because forestry management decisions in State Forests and on private land subject to the *Tasmanian Forest Practices Act 1985* are made in isolation from the System. It remains to be seen what affect the *State Policy on Water Quality Management 1997* will have on forestry operations and management, as State Policies were not intended or designed as substitutes for cross-sectoral decision-making processes. It must be emphasised, however, that the System's Public Land Use Commission (amalgamated in 1997 within the new Resource Planning and Development Commission) is responsible for recommending the use categories for State Forests to the State government. In this respect the System provides a process for determining the areas of State forest to be placed under the control of the Forestry Corporation and made subject to the *Tasmanian Forest Practices Act 1985*. The efficacy and consequences of this process which has had many critics is discussed in chapter 8.6. The issues of biodiversity and global environment change within the marine environment may similarly only be addressed through legislation external to the System. In this respect the marine environment is largely governed by numerous Fisheries Acts which although promoting the System's objectives contain few of the processes proposed in Agenda 21 as essential for promoting sustainability.

7.4.1.4 Transparent and Accountable Government in Relation to the Environmental Implications of Economic and Sectoral Policies

Schedule 1, by definition, requires transparent and accountable government in relation to the condition and management of the environment. This definition cannot be extended to the environmental implications of economic and sectoral policies. The mechanism to deliver transparency and accountability in environmental management is state of the environment reporting which must not only outline the condition of the environment, environmental trends and changes, and the achievement of resource management objectives, but must also recommend future directions for environmental management. Because the reports must be made public they provide a level of transparency and accountability not only for governments' past management decisions, but also for their responses to the recommendations for future management direction.

7.4.1.5 Performance Based Policy Decisions Informed by Current Economic, Environmental and Social Conditions and Trends

The requirement for performance based policy decisions appears within Schedule 1, but only through interpretation. Furthermore, the facility intended to provide performance based policy decisions, that is, state of the environment reporting, although required to assess environmental conditions and trends and to recommend future environmental management directions, is not required to assess economic or

social conditions and trends. Nor, as is noted above, is there a statutory obligation or mechanism for these recommendations to be translated to State policies. The first State of the Environment Report from 1996 contends, however, that the model for Tasmania's state of the environment reporting, the 'Pressure-State-Response' model, will assess the environmental, social and economic costs from changes in environmental conditions (Sustainable Development Advisory Council 1996b: iii). Despite this broadened assessment base, it is unlikely in the near future, due to the realities of political privilege enjoyed by the Department of Treasury, that the model will be extended to assessing economic and social conditions and trends.

7.4.1.6 Guaranteed Public Participation in the Decision-making Process

Public participation is another of the major strengths of the System's decision-making framework. It is a statutory right in the process for formulating State policies, local government strategic plans, planning schemes, and in determining development permits, including the conditions and restrictions attached to those permits. In the majority of instances concerning development permits, the right of participation also extends to appeal before the Appeal Tribunal, and in circumstances concerning the interpretation of the legislation, to the Supreme Court. Public access to all relevant development and environment information is guaranteed in order to ensure that public participation is effective. Many commentators believe that the potential for public participation will not be fully realised until a decision by the System's administrators is tested in a court of law for its non-compliance with the objectives of Schedule 1. When this transpires it is expected that public participation will have profound ramifications on the character and direction of development.

7.4.2 *The Provision of an Effective Legal and Regulatory Framework*

The second broad measure proposed in Agenda 21 to integrate environment and development in decision-making is the provision of an effective legal and regulatory framework. This framework is necessary to both integrate environment and development policy, and to place those policies in operation. The framework should consist of laws and regulations that are integrated, enforceable and effective.

7.4.2.1 Integrated and Enforceable Laws and Regulations

Concerted efforts were made by the System's architects to provide integrated and enforceable laws and regulations in order to encourage the maximum possible integration of environment and development policy, and for the operationalisation of those policies. The integration of the System's laws and regulations is achieved by

establishing a set of common objectives with which all development must comply, a single appeal and enforcement body common to all development sectors, and a common set of inter-sectoral enforcement mechanisms and instruments.

The use of common objectives to integrate the System's laws and regulations across all development sectors is achieved by requiring all development decisions to promote the System's objectives (Schedule 1). These objectives must, through a trickle-down process beginning at the State policy level, be embedded within all planning scheme provisions and environmental management conditions: provisions and conditions with which all development permits must comply. Integration is further reinforced by the existence of a single avenue for appeal (except for projects of State significance) and enforcement of all development decisions through a single appeal and enforcement body, the Appeal Tribunal. Integration is also supported by the use of common instruments and mechanisms comprising environmental protection notices, environmental infringement notices, and common penalties for enforcing planning scheme provisions and environmental management conditions across all development sectors.

By definition, the legal framework constitutes the law, but it must be noted that the law can be overridden in instances where State Parliament passes legislation allowing specific development to proceed without it being subject to the System's processes. This situation has already arisen. In February 1995 the State Government passed legislation, the *Copper Mines of Tasmania Pty. Ltd. (Agreement) Amendment Act 1995*, allowing a Project of State Significance by Copper Mines of Tasmania to proceed prior to the completion of the mandatory integrated assessment by the Advisory Council (*Mercury* 8 Feb. 1995: 10).

Notwithstanding this ever-present possibility, the regulations are eminently enforceable. The enforcement mechanisms include both command and control measures, and incentives. The command and control measures consist of penalties of up to \$1 000 000 for creating serious environmental harm; environmental protection notices which may require measures to prevent, control, reduce or remediate environmental harm, and if which ignored may incur a maximum penalty of \$100 000; environmental infringement notices which involve minimal fines for prescribed environmental nuisance offences, whilst failure to notify the appropriate authorities of an emergency or accidental release of a pollutant can incur a maximum fine of \$120 000.

The enforcement incentives comprise:

- i) environmental agreements which grant financial benefits to industry operators for achieving levels of environmental performance above that required by the regulations;
- ii) environmental improvement programmes which allow a maximum period of 3 years to achieve improved environmental performance such as conforming to a new environmental standard; and
- iii) financial assurances which involve operators depositing a financial security (with the Board of Environmental Management and Pollution Control) which is surrendered if a specified provision of the environmental management legislation, for which the assurance is provided, is breached during a specified period.

7.4.2.2 Effective Laws and Regulations

In addition to the need for integrated and enforceable laws and regulations, it is proposed in Agenda 21 that the integration and operationalisation of environment and development policy requires laws and regulations that are effective. Effective laws and regulations are seen as necessary to facilitate public participation in the development and enforcement of regulations on environment and development, redress or remedy for unlawful development or development that infringes upon individuals' or community rights, and a mechanism for reviewing compliance with the laws, regulations and adopted standards (United Nations 1992b: ch. 8.17-8.18). For a legal and regulatory framework to be effective it must be adequately understood by the System's administrative authorities and the public, and in Agenda 21 it is proposed that educational programmes be developed to deliver this understanding.

Interpreting the term 'regulation' as the broad spectrum of prescriptions for development activity, the System's statutes offer individuals and groups numerous avenues for involvement in the formulation of environment and development regulations. These include the right to participate in formulating State policies, local government strategic plans (which direct resource use and development), planning schemes (which direct land use and development), and development permits (which determine the environmental management requirements on development).

The System's regulations are enforceable by the public through the statutory right of civil enforcement. In this respect if individuals have reason to suspect that

Policy, planning or environmental management regulations are being breached, they may request the Appeal Tribunal to intervene. In the event of unlawful development, the *Environmental Management and Pollution Control Act 1994* (Section 63) allows the Appeal Tribunal to order environmental restoration, and to determine and order compensation payment for personal injury or for the loss of or damage to property. Although there is no recognition in the System of the concept of development infringing individual rights, development is unlawful when it results in environmental harm, or breaches Planning Scheme provisions or development permit conditions. These requirements are intended to protect the environment and community, and therefore general individual rights.

The System contains no mechanism for reviewing compliance with its laws, but offers various mechanisms for reviewing compliance with its regulations and standards. The principal mechanism, environmental audits, may be either undertaken voluntarily by industry to assess compliance with its permit conditions, or may be requested by the Department of Environment and Land Management if it suspects that an industry's environmental performance is unacceptable. In addition, regulations and standards are incorporated within development permit conditions, and the Department, in relation to Level 2 and Level 3 activities, and local government in relation to Level 1 activities, has the authority to inspect and monitor adherence to these permit conditions. Furthermore, because development permit conditions are publicly available, civil enforcement facilities offer a level of general public surveillance of compliance by development with regulations.

It is clearly foreseen in Agenda 21 that the community and administrative authorities need to fully understand any legal and regulatory framework if that framework is to function effectively. The System's solitary emphasis on education is, however, confined to the supporting objectives of the *Environmental Management and Pollution Control Act 1994* (Schedule 1, Part 2, cl.: 3j) which requires 'the promotion of public education concerning the protection, restoration and enhancement of the environment'. Although education programmes have been undertaken for both the public and the System's administrative authorities, in both the report by the Committee for the Review of the State Planning System² (1997), commissioned by the Liberal Government to review the State planning system, and work by TBA Planners (1996), it is contended that the highly inadequate level of awareness and understanding of the System (discussed in chapter 9.3) was the root cause of many of the problems experienced in implementing the System.

²Hereafter called the Edwards Report

7.4.3 *Using Economic Instruments for Shaping Attitudes and Behaviour Towards the Environment*

It is proposed in Agenda 21 that laws and regulation are important, but cannot alone be expected to deal with the problems of environment and development (United Nations 1992b: ch. 8.27). According to Agenda 21, fundamental changes in attitude and behaviour are needed to achieve sustainable development, and these changes can be encouraged by the use of economic instruments. The attitudes and behaviours proposed as needing change are the: (i) incorporation of the environmental costs of production within the domain of the producer and consumer rather than displacing those costs onto the broader community or following generations, (ii) integration of the social and environmental costs of development into the economics of development such that it adequately reflects the scarcity and value of resources, and (iii) use of market principles for framing the economic instruments and mechanisms necessary to achieve these changes (United Nations 1992b: ch. 8.31). The instruments proposed for initiating these changes in attitude and behaviour are the polluter pays principle (PPP) and the natural resource user pays concept. For these instruments to be effective, it is asserted that their associated policies need to be developed in accordance with market principles, and that they accurately reflect the economic value of natural resources and the waste assimilative capacities of the environment (United Nations 1992b: ch. 8.31). To achieve these ends it is proposed in the action programmes to establish systems for integrated environmental and economic accounting.

As outlined in Section 7.3.8, the polluter pays principle appears in the supplementary objectives of the *Environmental Management and Pollution Control Act 1994* (Part 2, cl. 3d). The instrument for implementing this principle exists within the provisions of the legislation, but is currently only applied in an extremely 'soft' form, that is, as a financial penalty for breaching the System's pollution regulations and standards rather than as a payment for the privilege to pollute. In this respect it is not the environmental costs of production but the environmental costs of unlawful waste discharge that are incumbent upon the producer and, by displacement, to some degree upon the consumer. The natural resource user pays concept, as outlined in Section 7.3.8, exists only by generous interpretation in the supplementary objectives of the *Environmental Management and Pollution Control Act 1994*, whilst the legislation contains no mechanism for its implementation. Neither is research into an environmental accounting System a State government priority, although according to Davies (pers. comm. Sept. 1997) some research is being undertaken by the Australian Bureau of Statistics.

7.5 Assessment

One can conclude that the System represents a substantive attempt to fulfil Agenda 21's recommendations for decision-making processes that integrate environment and development. Integration at all levels of policy, planning and management is supported by a policy framework that was not only developed in conjunction with the community, but guarantees broad community participation in policy development, and planning and management decisions. The integration of environment and development also comprises, to differing degrees, processes for achieving the recommended requirements of a long term perspective to decision-making, cross-sectoral decisions, transparency and accountability of government in relation to the impacts of their policies on the environment - without having the ability to separate the impacts of economic from sectoral policies, and performance based policy decisions.

The System's weaknesses in meeting Agenda 21's recommendations in relation to the integration of environment and development at all levels of policy, planning and management are clearly defined. Although the objective of regional strategic planning is firmly embedded in the System's objectives, the mechanism for such planning is absent, and presents a significant hindrance to integrated planning. In addition, the restricted jurisdiction of the System impairs its use for comprehensive long-term and cross-sectoral decision-making. Finally, the absence of a requirement for state of the environment reporting to link environmental impacts to economic and sectoral policies, and to assess economic and social trends impairs the ability for such reports to provide comprehensive transparency and accountability for government's decisions, and to provide truly performance based policy decisions.

In my assessment the requirement in Agenda 21 for a legal and regulatory framework that is integrated, enforceable and effective has been largely fulfilled through the use of commonality. In this context, the System mandates common objectives to be implemented via planning scheme provisions and environmental management conditions across all development sectors, with development permits conditional on development proposals meeting these provisions and conditions. The integration of law and regulation is further supported by common appeal (except for projects of State significance) and enforcement processes, a single appeal and enforcement authority for all development sectors, and a set of common enforcement mechanisms and instruments.

According to Agenda 21, the effectiveness of the laws and regulations is predicated on the existence of mechanisms for public participation in the development and enforcement of regulations, redressing and remedying unlawful development, reviewing compliance with the laws and regulations, and developing an understanding of the framework for those using and administering it. Except for a mechanism to provide the necessary understanding of the System for those using and administering it, the System has largely fulfilled the requirements for effective law and regulation.

The System's incorporation of the economic mechanisms proposed in Agenda 21 for achieving the critically fundamental changes in attitude and behaviour towards the environment can be said, however, to be extremely poor. The internalisation of the costs of production in relation to pollution exists only for breaches of pollution regulations and standards, whilst the System contains no mechanism for the internalisation of the costs of development.

7.6 The System's Potential to Facilitate the Benchmark Objectives of Sustainable Development

Sections 7.3 and 7.4 reveal a substantial level of incorporation within Tasmania's Resource Management and Planning System of both the benchmark principles of sustainable development and the proposed integrative measures to achieve the objectives of those principles. Hence the overarching and supplementary objectives and legislated provisions governing the integration of environment and development in the System's decision-making processes possess considerable potential to address the majority of the issues inherent within the efficient use of natural resources, the protection of the global commons, the sustainable management of hazardous and solid wastes, and the development of sustainable human settlements.

As is foreshadowed, however, many factors detract from the System providing an even greater potential to address these issues. Foremost are the limited jurisdiction of the System and its consequent weakness in cross-sectoral decision-making. Added to these are the diversity of possible interpretations of the System's objectives due to their non-prescriptive nature; the incomplete nature of state of the environment reporting, including a lack of obligation to implement its recommendations; and the absence of mechanisms to enable regional strategic planning. Perhaps most importantly, however, is the absence of economic instruments for reducing and eliminating unsustainable patterns of consumption.

The System's restricted jurisdiction is a fundamental limitation to achieving the objectives of the benchmark concept. Its exclusion from policy, planning and management roles in State forests, private timber reserves and the marine environment have significant impact on its ability to comprehensively address the efficient use of natural resources and to protect the global commons. Furthermore, these restrictions impair its ability for cross-sectoral decision-making. For example, forestry development and management decisions, particularly on private land, are made outside the System but have impact on core resource management issues such as water catchment management, water quality, biodiversity, and carbon cycle strategies.

Furthermore, although the System was designed with the facility for absorbing wider jurisdictional policy, planning and management roles to allow for the future adoption of these jurisdictional exclusions, there is neither an obligation to utilise this capability, nor any directives for its use. The results are producing a lack of integration of policy, planning and management both within and between development sectors. For example, recent statutes have attached the management of living marine resources and the development of marine farming to the System. The attachment was implemented by requiring the management of marine resources and the development of marine farms to promote the objectives of Schedule 1. However, there is no facility for appeal against management plans for living marine resources or marine farming, although the facility does exist for appeal to the Appeal Tribunal to enforce the provisions within those plans (using the System's enforcement mechanisms of environmental protection and infringement notices, along with its enforcement penalties). Although the *State Coastal Management Policy 1996* established under the System governs coastal management, management and planning processes essential for integrating environment and development have been retained by the Department of Primary Industries and Fisheries. This has resulted in an absence of integrated management of the coastal environment. In this respect, the Department of Environment and Land Management is responsible for coastal land management whilst coastal marine management remains the responsibility of the Department of Primary Industries and Fisheries. A similar lack of integration exists in coastal planning. The responsibility for maritime planning is shared between the Department of Primary Industries and Fisheries and the relevant local government. The Department of Primary Industries and Fisheries is responsible for determining marine resource protected areas, marine farming zones, and the management plans and controls for these areas and zones. Local government is responsible for planning and management of the remainder of the maritime environment as well as coastal land planning and management. Coastal land planning is required to be undertaken by local government in conjunction with the Department of Primary Industries and Fisheries so as to integrate coastal land

development and coastal marine development, but there are no integrating processes, mechanisms or administrative bodies currently in place.

Another consequence of the part-attachment of jurisdictions may also be the absence of the range of measures and strategies proposed in Agenda 21 as necessary to achieve sustainable development. For example, there is no facility for third party appeal against marine resource management decisions made by the Department of Primary Industries and Fisheries in relation to fisheries licences, quotas, or agreements, and there is no civil enforcement mechanism for alleged breaches of marine resources protected areas management plans, although civil enforcement provisions exist for alleged breaches of marine farming zone management plans.

The potential for the broad interpretation of the System's objectives is one of the more significant potential limitations on achieving the broad spectrum of benchmark objectives. Such interpretative scope holds the potential for individuals with, for example, a conviction that economic growth should take precedence over the environment, a lack of understanding of the concept of sustainable development, or a desire to avoid politically difficult decisions, to deliver other than sustainable decisions. This emphasis on development over the environment may not only favour decisions that have direct impact on the environment, for example, the destruction of ecosystems and elimination of biodiversity through logging old-growth forests, the approval of new industry with a heavy reliance on fossil fuels, or the continuing discharge of 'acceptable' levels of pollution. A lack of understanding of the concept of sustainable development or desire to avoid the politically difficult decisions by the System's administrators or the executive branch could result in the failure to recognise the importance of replacing carbon sinks destroyed through forestry, require new industry to rely upon renewable energy sources, and internalise the environmental costs of both production and development.

The interpretative weakness within the System's objectives highlights the need for its decision-making bodies to possess a balanced environment and development membership. As is discussed in chapter four, however, this balance is absent due to the statutory requirements for the majority of members of the Land Use Planning Review Panel, Sustainable Development Advisory Council and Resource Management and Planning Appeal Tribunal to be nominated or appointed by the Minister or one of his/her appointments, such as the Director of Environmental Control, and thus to be political decisions. Furthermore, the majority of members are required to be affiliated with pro-development organisations. Given this imbalance in the

environment/development focus of the membership of these administrative bodies, one can only conclude that their capacity to pursue a broad range of benchmark objectives is questionable.

The incomplete nature of state of the environment reporting and the lack of obligation to implement its recommendations further diminishes the potential to use the System to achieve the objectives of the benchmark concept. Its statutory focus consists of the condition, trends and changes in the environment (*State Policies and Projects Act 1993*: s. 29), but excludes economic and social conditions and trends, resulting in an inability in the System to adequately facilitate many economic and social circumstances in the context of long-term decision-making and performance based policy decisions. The consequences are highlighted in the following circumstances. In Tasmania there is a trend towards zoning rural land on the fringes of provincial centres for unserviced residential development, that is, land available for residential subdivision but without the provision for sewage, water, stormwater and drainage, sealed roads or footpaths. Experience in Tasmania has shown that this type of development may result in inexpensive and minimum sized residential blocks with inexpensive homes. Council rates are minimal and preclude the adequate provision of not only the aforementioned infrastructure but also recreational, library and community service facilities. Perhaps more importantly, these areas tend to have minimal employment opportunities, and frequently suffer from lack of services such as public transport, health and education. These development characteristics place profoundly negative pressures on the economic and social conditions and trends within these areas, resulting in poverty and crime. Without a focus on the economic and social repercussions of policy, these developmental situations may not be approached or assessed in the context of long-term or performance based policy decisions.

Despite the statutory provisions governing state of the environment reporting precluding a focus on economic and social conditions and trends, the first State of the Environment Report has, however, sought to integrate environmental, economic and social issues in an attempt to 'provide a more complete picture of how environmental quality is related to socio-economic activities, and how socio-economic activities influence environmental quality' (Sustainable Development Advisory Council 1996b: ii). For example, in its focus on Human Settlements (Section 5.32) the report highlighted some of the economic, social and environmental consequences of fringe urban areas, noting (Section 5.30) that social and equity concerns existed for urban fringe communities. In response to these concerns the report recommended implementing pricing policies on subdivision developments that reflect infrastructure, environmental considerations, service expansion and social costs to reduce *ad hoc* and

unco-ordinated development, and to discourage unsustainable rezoning of rural land. The report also proposed that an integrated regional settlement strategy for the State, and urban management strategies to guide development in each metropolitan region and local government area be developed as a means for addressing these concerns (Sustainable Development Advisory Council 1997: 15). At the present time, however, regional settlement strategies are difficult to prepare due to the absence of a regional strategic planning mechanism.

The lack of obligation to implement state of the environment report recommendations involves the absence of a statutory obligation to incorporate these recommendations within State policies. This absence of obligation is potentially a major impediment to achieving the objectives of sustainable development. It is important because not only were the recommendations from state of the environment reporting envisaged as the most efficient (because of their intended direct influence on the content of State policy) and effective (because of their performance based assessment) means for developing long-term policy, but because they are the only means provided in the System.

An example of the need for, but the absence of, a regional strategic planning mechanism is discussed above. Due to the role of regional strategic planning in the overall operation of the System (as an informer of local government strategic plans and planning schemes), however, the absence of an adequate mechanism has wider ramifications for pursuing the more complex and encompassing objectives of the benchmark concept. Strategic planning at a regional level is necessary for sustainable human settlement development but the absent mechanism may be replaced in large part by the co-operation of local governments in close proximity. The need for such a strategic mechanism becomes far more important, however, when attempting to implement State policies concerning, for example, stabilising or reducing the consumption of fossil fuels.

According to Bunker (1994), the fullest definition and application of the features of strategic planning stem from the recent work of the Planning Review in South Australia. These features consist of:

- i) assessing the current environment;
- ii) identifying trends and critical issues;
- iii) developing goals and objectives;
- iv) setting priorities;

- v) extensive public discussion and debate amongst interested parties;
- vi) developing strategies for key issues, selectively chosen, and expressed in a plan;
- vii) deriving related plans and instruments of policy; and
- viii) monitoring and regular updating (Planning Review 1992: 14).

A brief glimpse of these features conveys the imperative when implementing a policy, such as for stabilising or reducing the use of fossil fuels, for an integrated and co-ordinated approach at a State strategic planning level to sectors such as transport, sea-ports, energy, as well as human settlement planning. The objectives of such a policy cannot be achieved without the integration and co-ordination provided by a regional strategic planning mechanism.

It is emphasised in Agenda 21 that sustainable development depends on reducing and eliminating unsustainable patterns of production and consumption. Furthermore, it is proposed in Agenda 21 that economic instruments are used to achieve these ends. Although the System enables unsustainable patterns of production to be addressed, its provision of opportunities to address similar patterns of consumption is questionable. This is both because the objective appears only by generous interpretation in the System's supplementary objectives, and because the economic mechanism to pursue the objective, the natural resource-user pays concept, is absent from System's legislation. If, as is asserted in Agenda 21, sustainable development depends on not only reducing present consumption patterns through the efficient use of resources, recycling and reuse, but on significantly reducing the rate of consumption through altering the attitudes and behaviour underlying consumption, the omission of this economic instrument will have severe impact on the System facilitating the benchmark objectives of sustainable development.

7.7 Conclusion

In my assessment the System's potential to facilitate the objectives of the benchmark concept is considerable. The System's objectives, whether explicit or by interpretation, allow a broad implementation of the majority of the benchmark objectives. These objectives are in turn supported by a comprehensive arrangement of mechanisms and instruments to integrate environment and development in the decision-making process. This support exists despite the current absence of a mechanism to enable regional strategic planning and a requirement for state of the environment reporting to assess economic and social conditions and trends. It is reasonable to expect

that, given the System's broad objectives, and with sufficient political will, these omissions can be rectified.

The potential for the System's intended objectives to be achieved is weakened by the possible interpretations that can be placed upon those objectives, and the lack of obligation to translate the recommendations from state of the environment reporting into State policy. However, rather than being structural, these weaknesses, to the degree they hinder the System's facilitation of sustainability, will reflect the System's administrative bodies' and community's lack of understanding and awareness of the need for sustainability. With this understanding and awareness entrenched in the System's administration and in the community, there are no obvious obstacles to these weaknesses being resolved effectively and efficiently.

The impediments to using the System to achieve the benchmark objectives are its restricted jurisdiction and the inability, both through a lack of objective and mechanism, to internalise the environmental and social costs of development. These are serious impediments because the System's environmental and developmental restrictions preclude not only the area to which its objectives can be applied, but also the important need for cross-sectoral decision-making. The inability to internalise the environmental and social costs of development, primarily in relation to unsustainable patterns of consumption, may be the System's major weakness for, as is discussed in chapter six, consumption is fundamental to all environmental degradation and deterioration.

The reform of Tasmania's previous environmental protection and planning legislation was primarily initiated to overcome major flaws in the development-approval process, especially for major projects, and to arrive at an improved level of environmental management. The reform process became far broader in its focus, however, seeking not only to isolate the weaknesses of the previous legislation to exclude them from future legislation, but to introduce into new legislation the concept of sustainable development. It is reasonable to expect that a system constructed with these intentions would provide the means to avert, or at least resolve, the kinds of problems surrounding environment and development in Tasmania. I assess this expectation in the following chapter.

Chapter Eight

Addressing Tasmania's Environment and Development Problems

8.1 Introduction

The problems and conflicts surrounding development and environmental management during the operation of the *Environment Protection Act 1973* and the *Local Government Act 1962* are outlined in chapter two, whilst the weaknesses in the legislation associated with many of these problems and conflicts appear in chapter three. The assessment of the potential for the System to be used to address Tasmania's environment and development problems is based on an analysis not only of its providing means to address the circumstances discussed in chapter two, but to eliminate the weaknesses in the legislation seen to have contributed to those circumstances.

8.2 Legislated Objectives

Chapter Four establishes that the formulation of the System was based on a review of the previous planning and environmental protection legislation in conjunction with a comprehensive consultation process involving government agencies, industry, conservation groups and the public. The outcome delivered a System with statutory objectives based on principles of sustainable development, and statutory processes intended to implement those objectives in most development sectors. In contrast, the previous legislation lacked objectives, and its statutory processes were focused almost exclusively on pollution control within limited development sectors. The review of the previous legislation was undertaken within the context of three tiers of development: major projects, scheduled premises, and under local government permit. The new System was designed specifically to accommodate the planning and environmental management needs of these tiers of development and, in so doing, sought to address the major problems and conflicts previously encountered.

8.3 The Tier of Major Developments

The problems and conflicts which arose in the sphere of major projects are highlighted in chapter two as largely attributable to the absence of a formal development-approval process. This absence was not so much an intrinsic weakness within the legislation, but a consequence of development-approval processes for major

projects becoming politically driven, undertaken with scant regard for the environment, and without proper checks and balances in the public interest. Major project proposals exposed apparent government indifference to the environmental impacts of development, and a reliance on *ad hoc* development-approval processes which excluded public involvement from policy and project-development decisions and the refused to allow the public to understand the need for and the consequences of proposed development. Government also refused to acknowledge public concerns for the impacts of development, dismissing those concerns as nothing more than uninformed interference, and frequently denying the public its legislated right of appeal. Entangled within these *ad hoc* processes were governments' tendencies towards secrecy in decision-making, compliance with the demands of industry, and the sanctioning of seriously flawed EIA processes.

Due to the new System's statutory objectives and its development-approval process for projects of State significance, an indifferent attitude by State government to the impacts of major development and an *ad hoc* approach to major development proposals is now less likely, although not impossible. Indifference to the impacts of these developments has been minimised through the statutory obligation for all, not only major development, decisions by the government to promote the System's sustainable development objectives.

There are, however, circumstances where this obligation may be compromised. An example of this compromise, although not a Project of State Significance *per se* but a decision made to support such a project in the future, is the recently concluded Regional Forest Agreement (RFA) - an agreement between the State and Federal Governments for the development of Tasmania's State forests. Although the Public Land Use Commission (established under the *State Projects and Policies Act 1993*) Inquiry Process was the primary vehicle for public consultation and discussion during the development of the RFA, the basis of the Agreement was not the objectives of Schedule 1, but the goals and objectives of the National Forest Policy Statement (NFPS) developed by the Federal Government (Commonwealth of Australia and State of Tasmania 1997: 12). These goals and objectives broadly consisted of the Federal Government's interpretation of ecologically sustainable forest management and the facilitation of an internationally competitive wood products industry. They were not the goals and objectives resulting from Tasmanian domestic policy development, but those contained within the NFPS, and comprised the standards for forest management, environmental heritage, and the economic and social targets to be applied in each State (Public Land Use Commission 1996: 1).

In this instance the System's objectives were undeniably compromised, and one cannot escape the conclusion that because the RFA removed export controls on hardwood woodchips and opened the door to a much desired future pulp-mill, both the Federal and State Governments desired that compromise. Professor Kirkpatrick, a member of the national team of scientists who formulated the list of forest conservation criteria, claimed that although a lot of good scientific data was submitted to the RFA process, it was perverted by a political process devoid of scientific principles (*Mercury* 27 Nov. 1997: 6). He concluded that the Agreement would not only put increased pressure on Tasmania's threatened species, but could lead to continuing conflicts over Tasmanian forests. The Agreement was also condemned by 'Australian Greens' Senator Dr. Bob Brown for turning environmental management in Tasmania back decades, whilst the Wilderness Society criticised the Agreement as 'the single worst decision in the history of Tasmanian forests' (*Sunday Tasmanian* 23 Nov. 1997: 5). The *Sunday Tasmanian* reported that conservation groups such as the National Tarkine Coalition and the International Native Forests Network were preparing for a conflict which the Tasmanian Greens believed was inevitable, and which Dr. Brown believed warranted a larger battle than that undertaken to stop the Franklin Dam.

Another example where the possibility of compromise between the Federal and State Governments has the potential to rekindle past conflicts concerns the future development of a wood-pulp mill. Due to the development fiasco of Wesley Vale, a National Pulp Mills Research Programme (NPMRP) was established by the Federal Government to determine Commonwealth Environmental Guidelines for kraft pulping and bleaching of eucalypt. The State Government is obliged to accept but not prevented from strengthening these guidelines which have been developed with an eye to securing a potential one billion dollar investment. Should the State Government accept these guidelines, and the guidelines compromise the System's objectives, conflict with the conservation movement and the communities in proximity to any future mill is inevitable.

Given these circumstances, the use of the System currently appears unable to avoid or resolve a return to conflicts in the State's forests, and possibly concerning any future pulp mill. A qualification which can, however, be attached to this assertion is, that because the *Scoping Agreement for a Tasmanian Regional Forest Agreement between the Commonwealth of Australia, and the State of Tasmania* (Tasmanian Public Land Use Commission 1996: 2) states that the RFA cannot impose on the Tasmanian Government any obligation that is inconsistent with Tasmanian State law, any decisions made in accordance with the RFA may be appealed if they are perceived to be inconsistent with the System's objectives. Under these circumstances any assessment of

the potential use of the System to resolve recurrences of past forest, and perhaps even pulp-mill disputes, is premature, and the benefits of legislated objectives yet to be fully revealed.

Despite the State Government's compromised position in upholding the System's objectives in relation to projects of State significance, potential State Government indifference to the environmental and social impacts of proposed projects of State significance is substantially diminished through the statutory approval process for such proposals. This process, which was also intended to eliminate the potential for *ad hoc* approval processes for projects of State significance, requires public disclosure of all relevant details of development proposals, the right of public submission in relation to the draft integrated assessment of proposed developments, the assessment of proposed projects of State significance by the System's principal and independent assessment body (the Advisory Council), and the Minister's acceptance of any proposal, including its operational and management conditions, to be approved by both houses of Parliament.

The previous lack of government transparency and accountability in the development-approval process for projects of State significance has been addressed through the requirement for all Ministerial directives to the Advisory Council, and for all development proposal recommendations from the Council to the Minister, to be made public. Furthermore, should the Minister's recommendations to Parliament that a project proceed contradict those of the Advisory Council, the Minister must specify the Acts justifying the project's approval, the conditions under which the project should proceed, and the agencies responsible for enforcing those conditions.

One of the goals of this process was to eliminate, or should it occur, reveal State Government compliance with industrialists in approving development proposals. The process demonstrated this capacity, when, during the processes established to cover the State's first proposed Project of State Significance, the State Government passed legislation, the *Copper Mines of Tasmania Pty. Ltd. (Agreement) Amendment Act 1995*, to allow Copper Mines of Tasmania to begin building a tailings dam before the completion of the mandatory assessment for such proposals. In this instance the System's provisions for transparency and accountability demonstrated that such compliance will neither proceed unseen nor attempt to be hidden by State government.

There are vestiges of previous State Governments' attitudes concerning the exclusion of public participation from the projects of State significance development-approval process and the opportunity for State Government compliance with industrialists which have been transferred to the new legislation. Depending on the nature of the project, they contain the potential for significant social conflict. Central to these attitudes is the absence of any public appeal mechanism against the declaration of a project of State significance, the recommendations by the Advisory Council to the Minister that a project should proceed, and the Minister's recommendations to Parliament for a development to proceed contrary to the Advisory Council's position.

These ingredients for social conflict are currently evident in the State's second project of State significance - the 'Oceanport' international cruise liner complex proposed for Hobart's Princes Wharf - currently subject to an integrated assessment by the Advisory Council. The proposed project first created dissent in the community when declared a project of State significance by the Minister because the declaration effectively removed the right of public appeal against the State Government's final decision, and the contentious nature of the proposal. The dissent continues to grow because of the absence of the right of public appeal against a proposal not only involving private development on public land with high community value, but for a development claimed to be contrary to the historical character of the area. Given the Liberal Government's and Labor Opposition's support for the project, should it proceed, it will be the System's first true test of the independence of the Advisory Council as the State's principal development-assessment authority, and of the State Government's compliance with the System's sustainable development objectives and provisions for due-process.

The System's administrative structure also reinforces the sentiment of dispute. The structure is based upon a Ministerial model, and although the statutory provisions underpinning the structure provide a significant level of political transparency and accountability, they are in part sacrificed by the membership of the decision-making bodies which is skewed in favour of development interests, and largely comprised of direct and indirect political nominations or appointments or both. Chapter Four (Section 6.2) outlines the membership of the Advisory Council, the assessment body for projects of State significance. Its membership does not reflect an assessment body in which conservation interests are entitled to feel the same confidence as development interests in decisions relating to the integration of environment and development. Moreover, the Council's membership is not conducive to, nor do its decisions warrant bald acceptance by conservation interests as providing a sustainable balance between environmental management and development.

8.4 Scheduled Premises

The problems associated with scheduled premises' operations (now Level 2 activities) primarily involved industry's discharge of wastes, both with and without Ministerial exemption. Associated with these problems was the inability of the previous environmental protection and land use planning legislation to facilitate the integration of environmental management and land use planning and, because of its limited enforcement tools and inadequate legal provisions, to enable the effective enforcement of the legislation. Also associated with these problems was the issue of political will and political manipulation. Although this is an issue of crucial relevance to all levels of development, it is primarily addressed in this section. In addition to these issues, the pollution standards attached to the former legislation were largely inadequate either because of their comparative leniency to other national standards or their inappropriateness to the receiving environment.

Ministerial exemptions, undeniably the major cause of the State's environmental degradation under the previous legislation due to their imposing minimal pollution restrictions on industrialists, are not available under the new System. It must be noted, however, that the abolition of Ministerial exemptions did not require new legislation, merely more stringent enforcement of the previous *Environmental Pollution Control Act 1973* and the pollution regulations and standards applicable to that legislation.

Although Ministerial exemptions are now unavailable, the System does offer environmental improvement programmes. According to Davies (pers. comm. Mar. 1995), these were intended to allow industrialists a maximum period of three years to comply with newly introduced regulations and standards if they were unable to meet those regulations and standards when initially introduced. Their use has, however, been applied to scheduled premises that could not meet the withdrawal of Ministerial exemptions by 1994. According to the 1994-95 Department of Environment and Land Management Annual Report (Department of Environment and Land Management 1995: 52) there were approximately ten mining, paper manufacturing and metal processing industries, and six sewage treatment plants, all previously classified as scheduled premises, operating under environmental improvement programmes. The figures for new and existing environmental improvement programmes for the year 1996-97 are not available in the Department's Annual Report. However, Jim Lockley (the Departmental officer responsible for industry and mining) claimed that only 4 programmes remained in operation for heavy industries, with the majority of these expected to be completed in the following twelve months, and that a small percentage of the sewage treatment works

were expected to complete their programmes in the following twelve months (pers. comm. Jan. 1998). It is my assessment that not only has the problem of Ministerial exemptions been eliminated, but that environmental improvement programmes, although not used in their intended role, are significantly reducing the volumes of environmental waste that occurred under the previous legislation.

The problems of industrial discharges in breach of the regulations and standards but without Ministerial exemptions primarily entailed the discharge of wastes through the stormwater and sewage systems by operators of small to medium sized scheduled premises. These discharges were found to occur in circumstances involving inadequate knowledge by operators of their licence conditions, inadequate waste discharge monitoring programmes that breached licence conditions, and the absence of contingency plans for dealing with accidental spills. Fundamental to these circumstances was the lack of State and local government resources to supervise, monitor and enforce the operations of small to medium sized scheduled premises. These problems have been addressed in part by subjecting development proposals for Level 2 activities to a stringent development-approval process which ensures that licence conditions and their requirements for waste discharges, waste discharge monitoring and contingency plans for accidental spills are fully understood and addressed.

The issue of insufficient resources to adequately supervise, monitor and enforce the operations of Level 2 activities cannot, however, be claimed to have been rectified. According to the Edwards Report this internationally recognised system is being let down by a lack of resolve to ensure that it is supported by the necessary resources (1997b: 5), whilst TBA Planners asserts that there is a general lack of resources, expertise and information to support the System (1996: 26). There are numerous justifications for this, the principal being a shrinking State and local government resource base. However, there is also an apparent absence of political will to fully implement the System - an issue discussed in detail below. Although the consequences of the continuing lack of resources are difficult to assess, one may conclude that because the Department of Environment and Land Management is limited to one-third of the optimal number of visits to industrial operations (Department of Environment and Land Management 1997: 13), the problems associated with small to medium sized scheduled premises have not been eliminated.

In chapter three I reveal that a systemic problem underpinning the environmental impacts of not only scheduled but also non-scheduled premises was the

non-integration of environmental management and land use planning. This absence has been comprehensively addressed in the System through a combination of requirements. All development must now comply with planning scheme provisions, and except for development classified by planning schemes as permitted as of right, to undergo an appropriate level of EIA in accordance with the System's EIA principles. An EIA for all Level 2 activities must be undertaken by the Board of Environmental Management and Pollution Control, whilst all Level 1 activities must be assessed by either local government, or if requested by either local government or the Director of Environmental Control, treated as Level 2 activities and assessed by the Board. The assessment of Level 2 Activities by the Board has also enabled substantive attention to be given to the integration of environment and development in relation to the acid mine drainage problems associated with mining in Tasmania discussed in chapter two. Operators of level 2 activities may now be required to submit environmental management plans for all proposed operations (*Environmental Management and Pollution Control Act 1994*, s. 25(6)(b)), with those plans, when countenanced by the Board, to comprise a part of the development permit. This process of integrating environmental management and land use planning has the potential to significantly alleviate the impacts of Level 2 activities on the environment, and to resolve the previously fragmented decision-making processes that were resulting in considerable confusion and frustration to developers and government alike.

Two difficult issues with the previous environment protection and land use planning legislation common to both State and local governments were the problems encountered in enforcing the legislation, and the political manipulation and absence of political will which hindered attempts to achieve the legislation's objectives. The enforcement problems were manifold and included the lack of resources for supervising, monitoring and enforcing the licence conditions of scheduled premises, the absence of appropriate enforcement tools, the absence of legal provisions to enforce the legislation and the near insurmountable difficulties in enforcing the law through the civil court.

The continuing lack of resources to support the System has been highlighted. The difficulties in enforcing the previous legislation due to enforcement tools which were restricted to licensing and prosecution (the command and control approach) have, however, been comprehensively addressed. Although the command and control approach remains, with dramatically increased fines for causing environmental harm, there is now a substantial capacity to encourage compliance with and even beyond statutory requirements. The Board of Environmental Management and Pollution Control may request financial assurances from those responsible for Level 2 or Level 3 activities as security against non-compliance with the *Environmental Management and*

Pollution Control Act 1994 (s. 35). The Board may also enter into environmental agreements with industrial operators to ensure that management, investment or monitoring functions required to achieve environmental performance beyond compliance with the Act are undertaken (Tasmania 1994: s. 28). Local government, under its own authority, may also enter into environmental agreements with developers for the prohibition, restriction, regulation or compliance with conditions attached to the use or development of any land within a planning scheme. These agreements primarily consist of financial bonds or guarantees held by local government as security against non-compliance with the agreement.

The enforcement difficulties resulting from the inadequate legal provisions in the previous legislation have similarly received a comprehensive overhaul. This has been achieved by providing a statutory definition for the occurrence of material and serious environmental harm (Tasmania 1994; s. 5), requiring all development to be in accordance with planning scheme provisions (Tasmania 1993c: s. 48), and requiring development permits to incorporate those provisions as well as relevant environmental management requirements (Tasmania 1993c: s. 51, Tasmania 1994: s. 25). Because of these clear legal definitions and development requirements the System's legal provisions allow specific enforcement avenues. Material or serious environmental harm may be effectively prosecuted before the civil courts. In instances of alleged breaches of planning scheme provisions or development permits, State Government (in relation to Level 2 and 3 activities) and local government authorities (in relation to Level 1 activities) may issue environmental protection notices requiring the cessation or modification of an activity, or the undertaking of measures to prevent further or remediate past environmental harm or both. Persons failing to comply with environmental protection notices may be prosecuted before the civil courts. Authorised local government officers may also issue environmental infringement notices requiring the payment of fines for prescribed offences such as littering. State and local governments as well as any private individual may also request the Appeal Tribunal to issue orders requiring alleged breaches of the environment protection or land use planning Acts or requirements determined under those Acts to cease, or requiring any activities in breach of any environmental improvement programme, environmental agreement or environmental protection notice to be rectified. Failure to comply with an order issued by the Appeal Tribunal is similarly liable to prosecution before the civil courts.

Although providing considerable means for addressing many of Tasmania's past environment and development problems, these means will only be effective if the System is implemented as was intended. In this respect, the lack of understanding of

the objectives and legal provisions of the System, a situation which hindered the effective implementation of the previous legislation, especially by local government, continues. This situation was emphasised in the Edwards Report (1997: 5) which claimed that the limited understanding of the System by its decision-makers had resulted in them attempting to remould the System to suit outdated ideas and practices, rather than embracing it. TBA Planners (1996: 31) supported this assertion, contending that there were differing levels of understanding and comprehension of the System and that there was need for a cultural change in the way resource management and planning was perceived and performed. Both reports cited the urgency for the State Government to actively support educating the System's decision-makers in the concept of sustainable development and the System's statutory processes.

The limited effect of the former environment and planning legislation resulted from an absence of political will to achieve its objectives and a detrimental level of political interference in decision-making. It can be argued that detrimental political interference (except that surrounding projects of state significance) has been all but eliminated, but that the absence of political will to achieve the System's objectives continues. The lack of understanding and comprehension cited above reflects an absence of political will to implement adequate educational programmes, but this absence is also reflected in the claims of attempts to remould the System to suit outdated ideas and practices, and the need for a cultural change in the perception of resource management and planning. In addition to these claims the Edwards Report and TBA Planners make multiple references to circumstances such as the limited resources provided for the efficient operation of the System and the dearth of State policies (discussed below) which have significantly hindered the efficient functioning of the System. The lack of political will to promote the System's objectives has been nowhere more clearly exemplified than with the announcement in 1996 by Peter Hodgman, the Minister for the Environment, of the State Government's intention to release a discussion paper on regulating the subdivision of rural land (*Mercury* 11 Sept. 1996: 3) - an initiative welcomed by most for the reasons outlined in chapter 2.3.3.3. In response, Malcolm Lester, the spokesperson for the Association of Consulting Surveyors, denied the glut of subdivided land was a problem, contended that under new planning law it was almost impossible to subdivide good agricultural land, and claimed that developers rather than taxpayers paid the costs associated with subdivision (*Examiner* 11 Sept. 1996). Following spontaneous protest and lobbying from the land development industry, the State Government's intention was quickly retracted. In response to its claims that insufficient resources were limiting the efficient implementation of the System, TBA Planners proposed that there was a 'need for the obligations bestowed on various authorities and agencies by the System to be met ... including ... the obligation to

further the scheduled objectives and for proper enforcement to be undertaken' (1996: 29).

The inadequacy of the regulations and standards for water pollution and discharges to water bodies has recently been addressed through the introduction of the *State Policy on Water Quality Management 1997* (Tasmania 1997a). The objective of the Policy is to achieve water qualities that protect all nominated environmental values for a specific water body. The guidelines to achieve this objective are twofold. Those protecting human health should be in accordance with the recommendations by the National Health and Medical Research Council, whilst those protecting values other than human health should be determined by the Board of Environmental Management and Pollution Control on a case by case basis in accordance with the current Australian Water Quality Guidelines as determined by the Australian and New Zealand Environment and Conservation Council (Department of Environment and Land Management 1996: 11, 12). The sea change introduced by the Policy abandons the exclusive focus on point source pollution as existed in previous legislation, and instead protects nominated ambient environmental values. The Policy (s. 7.1) lists the protected values which can be applied to any given water body, and requires that the values for specific water-bodies are determined through consultation with all agencies, organisations and the public, and that those values are incorporated in planning schemes.

8.5 Development in the Sphere of Local Government

The System's potential to provide means for averting or resolving the impacts of development the community's living and working environment in the sphere of local government involves, as I discuss in chapter three, addressing the inappropriate and unauthorised use of the stormwater system for waste disposal, the siltation problems from urban and rural run-off and the consequences of uncontrolled subdivision. The unacceptable use of the stormwater system was associated with the lack of knowledge by urban residents and operators of non-scheduled premises (now Level 1 activities) of statutory pollution and planning controls, and the lack of recognition of the cumulative affects of small inputs to the pollution problem. In addition, I claim that these circumstances resulted in a significant absence of planning and development approvals, lack of familiarity with approval requirements and conditions, and minimal awareness of the *Dangerous Goods Act 1976*.

The factors fundamental to overcoming these problems are public education concerning the goals and requirements of the System, and sufficient resources in the

sphere of local government to supervise, monitor and enforce compliance with these requirements. Although the supplementary objectives to Schedule 1 in the *Environmental Management and Pollution Control Act 1994* (Part 2, cl. 3j) require the 'promotion of public education about the protection, restoration and enhancement of the environment', it is my belief that this requirement has been accorded only secondary importance by the State Government. The Edwards Report (1997: 5, 71) supported this contention, asserting that public awareness of the System was inadequate due to insufficient public education, and that the resulting lack of understanding continued to hamper progress towards achieving the System's desired outcomes. As is noted above, the Edwards Report and TBA Planners were also equally critical of the provision of resources necessary for the System's efficient operation. This issue is addressed in detail in chapter 9.3 in the discussion on the System's implementation.

The siltation problems associated with urban and rural run-off were found to be a consequence of the narrow planning objectives of the *Local Government Act 1962* which primarily focussed on the provision of human services and the preservation of objects of cultural and historical beauty. The planning objectives of the new *Local Government (Building and Miscellaneous Provisions) Act 1993*, are only minimally broader in focus than the previous legislation - a consequence of the intention that the Act would be temporary. All development is now, however, subject to planning scheme provisions which under the *Land Use Planning and Approvals Act 1993* (Section 20, 1a, c) must 'further the objectives set out in Schedule 1', and which enable planning schemes to be used to 'make any provision which relates to the use, development, protection or conservation of any land [covered by the Scheme]'.

The principal cause of siltation from urban run-off resulted largely from inadequate control over subdivision development. Under the new legislation, subdivision is classified as development and local governments may refuse subdivision applications if subdivision plans do not provide for adequate littoral or riparian reserves, the preservation of trees and shrubs, and satisfactory drainage within and off the development or both (*Local Government (Buildings and Miscellaneous Provisions) Act 1993*, Section 85). Furthermore, because subdivision is now classed as development, subdivision proposals must be submitted for public scrutiny, submission and appeal, a process which further enhances the potential for subdivision to be undertaken in a sustainable manner.

The siltation problems associated with rural run-off may be similarly addressed through using planning schemes to stipulate provisions relating to the use,

development, protection or conservation of rural land. Although the widespread use of planning schemes for implementing environmental management on rural land will require a profound cultural and political shift, there are isolated indications of this taking place. For example, the Glenorchy Municipal Council, in an effort to address the rural origins of its siltation problems, has designated within its planning scheme rural land areas where particular agricultural practices require a permit (McMullen pers. comm. Feb. 1998).

The new legislation, as is shown above, may be used to address land degradation and the loss of aesthetics within subdivisions. It may similarly be used to address the continued uncontrolled growth and dispersed nature of subdivisions, and the inadequate payment by developers for the infrastructure costs of land subdivision. This capability is provided by planning schemes providing for the strategic development of land, and the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Section 80) authorising local governments to enter into agreements with developers for the provision of roads, drainage, water and electricity. Most importantly, however, the local government statute also provides for subdivision applications to be refused if they make inadequate provision for present or future infrastructure needs.

Although the legislation may be used to eliminate these problems with siltation and uncontrolled subdivision, including the inadequate provision of infrastructure, there is considerable opportunity for this potential to be ignored. Development decisions in the sphere of local government are in large part made by the System's decision-making bodies (the Review Panel, the Board of Environmental Management and Pollution Control, the Appeal Tribunal) which guarantee a significant degree of political independence from local government elected officials. Decisions made within local government are not, however, as free from political interference. Local government elected officials continue to interfere in Municipal land use planning decisions by supporting continued diverse subdivision and minimal headworks costs from developers. During the interviews with local government authorities I have spoken to at least one former Municipal planner who resigned because such interference from elected officials removed his inability to implement the System's objectives. The Edwards Report supported this perception, claiming that

it has become apparent that many elected representatives have not yet grasped the fact that their role is now one of direction and policy rather than deciding on the detail of the process, ... and that ... there must be a greater realisation by local government councillors that the delegation to responsible officers for the day to day decision-making is the only way to ensure efficient outcomes (1997: 6).

TBA Planners (1996: 43) contended that a commitment to the objectives of the System is required by elected officials, and that there is a need for education to assist them to make informed and quality decisions, including the application of sustainable development principles through the statutory process.

8.6 Development Excluded from Previous Environment and Planning Legislation: Forest and Rural Industry

Chapter 2.4 discusses the problems and conflicts inherent in developing and managing State Forests on Crown and private and rural land, development sectors not subject to the previous environment protection and land use planning legislation. These problems were substantial, and many of the persons interviewed had hoped these sectors would be brought under the jurisdiction of the new System. As is previously discussed, however, these sectors were excluded from the System's jurisdiction. As a consequence, the development provisions of up to 48.5 percent of State owned forests and up to thirty percent of State forests under private ownership remain under the jurisdiction of the *Forest Practices Act 1985*. Although the Forestry Commission became the Forestry Corporation in 1994, the conservation system for flora and fauna claimed in chapter 2.4.1 to be inadequate, remains. In addition to the inadequate conservation of flora and fauna, the exclusion of planning jurisdiction over private timber reserves fails to address the issues of loss of visual amenity and soil degradation, including siltation, which can legally occur under existing legislation.

Nor did the System address the potential for future conflict surrounding the logging of State forests. As is highlighted above, the Public Land Use Commission, under the *Public Land (Administration and Forests) Act 1991*, assumed responsibility for administering Crown Land. Although it was the assessment body for the recent Regional Forests Agreement (RFA), the basis of the Agreement was the Commonwealth National Forest Policy Statement. The outcome of the Agreement, foreshadowed by an expectation expressed to me from within the Commission that the Agreement would be first and foremost political, will, according to many, inevitably see conservationists returning to forest protests to try to protect recognised World Heritage Values.

The absence of previous legislation governing rural industry's land development and management practices and the consequences of those practices are discussed in chapter 2.4.2. Due to the capacity for planning schemes to be used to make any provisions which relate to the use, development, protection or conservation of rural land (except for that classed as Private Timber Reserves), and for the State Government to introduce State policies governing rural land use, the provisions of which must be incorporated within planning schemes, these problems may now be addressed. In this

context, the recently introduced *State Policy on Water Quality Management 1997* which stipulates that 'planning schemes must require that land use and development is consistent with the physical capability of the land so that the potential for erosion and subsequent water quality degradation is minimised', will potentially affect many rural land management practices (Tasmania 1997a: 24). This Policy is, however, primarily focussed on managing potential water pollution. The introduction of State policies and the use of planning schemes to address more general erosion problems will depend on a greater understanding of sustainability issues by the System's decision-makers, and a fundamental change in the belief by many rural land owners in the unfettered right to its use and development. Such a fundamental change will require greater political support for, and less political interference with decision-makers pursuing genuine sustainable development outcomes. At present there are only faint indications that this increased political support and lessened political interference will eventuate in the near future.

8.7 Conclusion

Chapters Two and Three reveal that the State's environment and development problems and conflicts associated with the previous environmental protection and planning legislation were associated with legislation that was not only inherently weak in objective and process, but had limited jurisdiction, lacked the political will necessary to implement and enforce it, and was poorly resourced. In my assessment a quantum leap was made in introducing a System with statutory objectives promoting sustainable development, and statutory processes in most instances sufficient to meet those objectives. There are instances, however, where these processes are unlikely to avoid or resolve recurrences of the circumstances surrounding past problems. In addition, the legislation is fettered in various areas and to differing degrees by the capacity for political decision-making, jurisdictional restriction, lack of political support and inadequate resourcing. These issues will also diminish the use of the System in averting or resolving the kinds of problems and conflicts experienced in Tasmania.

The System's statutory objectives and development-approval process for projects of State significance have substantially diminished the possibility for the approval of major projects to degenerate into an executive branch driven *ad hoc* process with its past attributes of indifference to environmental impacts, denial of public understanding and participation, and the sanctioning of seriously flawed EIA processes. The mechanisms to ensure political accountability and transparency have, however, insufficiently eliminated the avenues for interest-bias, the basis for past disputes over major projects. The opportunity for interest-bias by elected representatives potentially allows for the System's objectives to be compromised by the acceptance of alternative

objectives determined by the Federal Government, and for removing the right of public appeal over the approval of major projects by declaring them as projects of State significance. Furthermore, the declaration of a project of State significance is an executive branch decision that cannot be appealed by the public, and consigns the project for assessment to the pro-development and politically nominated Advisory Council.

The elimination of the majority of the problems surrounding scheduled premises was initiated with the phasing out of Ministerial exemptions in 1989, a circumstance which cannot be attributed to the System, but to the enforcement of the previous legislation after fifteen years of operation. The new System offers no such avoidance of pollution regulations and standards, which, in contrast to their previous point-of-source focus, are now principally focused on the ambient environment. Moreover, the appropriate ambient regulations and standards are to be determined through the formal process for, and encapsulated within, State policy.

The potential to avert the environmental problems associated with scheduled premises has clearly been provided by integrating environment and development through an combined approach to planning and environmental management. This approach is supported by a development-approval process which requires an EIA for all proposed Level 2 developments and those Level 1 developments deemed necessary, in accordance with the System's statutory EIA principles. This process should not only address the illegal discharge of wastes and ensure that issues such as contingency plans for accidents are in place, but also deliver the operators of industry an understanding and knowledge of the legislation and their permit conditions. Despite this potential, however, the previous problem of insufficient resources remains and, based on past observations, the level of compliance with the permit conditions will not be adequately enforced until sufficient resources are employed to supervise and monitor these operations.

Furthermore, the argument that only minimal attempts, including the employment of limited resources, were made to enforce the previous legislation because of its weaknesses, can no longer be justified. The System's enforcement capability, in large part constructed in response to the recognised weaknesses of the previous legislation, is substantial. This capability is underpinned by a legal definition for the occurrence of environmental harm. In addition, all development must be undertaken in accordance with planning scheme provisions, and where applicable, all development permit conditions. The System provides numerous mechanisms to encourage

developers to abide by, and to encourage industrialists to work towards compliance with these provisions and conditions. Should encouragement fail, various mechanisms are available for enforcing this compliance. Individuals failing to comply with these mechanisms are liable to prosecution in the civil court. An attempt has been made to overcome the previous problems surrounding the civil court's role in prosecuting environmental transgressions by legally defining environmental harm and using an environmental enforcement authority (the Appeal Tribunal) to adjudicate appeals concerning alleged breaches of the legislation or its requirements.

The integration of environment and development through a combined approach to planning and environmental management has also provided the potential for avoiding the kinds of environmental management problems which have beset local government authorities. Because the integration of environment and development is implemented through planning schemes prepared by local government, the quite diverse problems associated with urban and rural land development and use may be comprehensively addressed through planning scheme provisions. As is noted above, however, the System has not generated increased resources in the sphere of local government, and the level of supervision, monitoring and enforcement of non-scheduled premises has remained inadequate. One cannot escape the conclusion, however, that many cultural changes need to occur before these provisions are fully utilised and enforced.

Although the System provides local government authorities with the mechanisms for addressing these major land use problems, including eliminating the difficulties in enforcing the previous legislation because of statutory weaknesses and limited enforcement tools, there are circumstances which have been transferred from the old to the new legislation which are negating this potential. These circumstances, discussed in full in the following chapter, consist of local government's continued lack of understanding of the legislation's objectives, and continued interference by elected councillors in development-approvals, especially concerning land subdivision.

As is discussed in chapter three, the development and management of the State's rural land and forests was not only problematic, but also beyond the jurisdiction of the previous environment protection and planning legislation. Although the System has offered a facility for addressing the problems associated with rural land use and development, it has failed to facilitate the resolution of the management and development problems associated with State Forests, including those classified as private timber reserves. These areas remain outside the jurisdiction of the System.

Consequently, it is inevitable that conflict over the logging of State Forests, and the environmental degradation associated with private timber reserves will continue. The reasons for this inevitability must not be overlooked. They are the result of interest-bias by the executive branch overriding the objectives of a domestically determined System for achieving sustainability.

In this and preceding chapters I investigate Tasmania's pathway to sustainable development legislation, and assess the potential for the legislation to facilitate the objectives of a Tasmanian benchmark for sustainability and a resolution to Tasmania's environment and development problems. There are many lessons which have emerged from this pathway. These lessons, together with those from the implementation of the legislation are discussed in the following chapter.

Chapter Nine

Lessons from Tasmania's Experience in Developing and Implementing Sustainable Development Legislation

9.1 Introduction

There are many and varied lessons to be extracted from Tasmania's experience in developing and implementing sustainable development legislation. Some are unique to Tasmania because of its economic, political, environmental and social circumstances, whilst others would conceivably be relevant in most circumstances involving the development and implementation of such legislation. The focus of this chapter is on the latter circumstances in the hope that it might assist those similarly struggling with the concept of sustainability and its implementation.

9.2 Lessons from the System's Development

The impetus for the development of the System, and the lessons which emerged from that impetus, affirm the belief in the centrality of elections to policy politics in a liberal-democracy, given that political survival is dependent on electoral survival (Economou 1993:156). In these terms, political acquiescence to greater consideration of the environment in Tasmania was achieved only after decades of increasing public protest, albeit by a minority of the community, over what were considered environmentally irresponsible development decisions by consecutive State Governments. The pressure of this protest reached a crescendo during the 1989 State elections which closely followed the Wesley Vale dispute. During this period both the Liberal Government and Labor Opposition were forced to recognise that the continuing protests over State Government development decisions were hindering the State's economic growth and development. However, it was primarily the Labor Opposition which recognised that a response to community demands for more than economic considerations when assessing development proposals was an electoral necessity. Furthermore, this necessity became urgent because of the high profile of the five independent Green candidates in the pending election. Their presence, perceived by the Labor Opposition as an electoral threat because of their growing support from previously mainstream political supporters, was the greatest political stimulus for introducing a broader perspective on the environmental impacts of development, and

resulted in the Labor Party 'greening' its policies during the election campaign (Haward and Smith 1991: 10). In retrospect, these policies, because of subsequent political events resulting from the election of the five independent Green candidates to Parliament, marked the beginning of a process which two years earlier was only contemplated by the most optimistic.

In the context of the legislation's development, one of the most important lessons to have emerged, and one which supports its emphasis throughout Agenda 21, was the crucial role of the domestic consultation process. It is because of this process that the System's corner-stone, the concept of sustainable development and the enshrining of those principles within legislation, exists.

The enshrining of sustainable development in legislation was initiated by Tasmania's Legislative Council, arguably the most powerful and conservative Upper House in Australian State politics. Although the Federal and State Governments were at that time actively pursuing ecologically sustainable development through initiatives such as the Federal Government's Ecologically Sustainable Development Working Groups, its National Conservation Policy, and its pursuit with the States of an Intergovernmental Agreement on the Environment, the principal reason for the Legislative Council's initiative lay in the comprehensive consultation process which had been undertaken with all stakeholders by its Select Committee of Investigation into the public land use allocation decision process. Due to the submissions to the investigation overwhelmingly supporting an approach to land use decision-making which embraced the concept of sustainable development and enshrined the principles of the concept in legislation, the Select Committee could not avoid recommending that approach to the State Government as the basis for reform. The State Government's response to this recommendation, the formulation of an expanded version of the sustainable development objectives from New Zealand's *Resource Management Act 1991* and their insertion in the *Public Lands (Administration and Forests) Act 1991* as Schedule 1, set the precedent for future reform.

The pivotal role of the consultation process in shaping the legislation was again highlighted when the State Government's vision for development approval and land use planning was publicly revealed. This vision, which appeared in the *draft Planning Bill 1991*, had not been framed by any public consultation process and was received with considerable disquiet by the public for having a myopic development-approval orientation. Moreover, the representatives of industry saw it as incomplete because of its inability to integrate environment and development in planning, policy

and management. The consultation process was largely responsible for rectifying these failings. Consultations between the System's architects and, particularly industry representatives, allowed the representatives to articulate their need and desire for the integration of environment and development through the use of a formal EIA process. In addition, the consultation process revealed a general belief that the reforms should include the insertion in legislation of an intrinsic values clause such as that appearing in the New Zealand legislation and proposed in the *Public Lands (Forest and Administration) Bill 1990*.

A different lesson, but one no less important in the benefits of consultation, was the crucial support it generated for those in government attempting to deliver meaningful reform but facing considerable pressures from inside government opposed to that reform. These pressures, as indicated, came from Treasury officials desiring to align the reforms with an economic agenda related to industry's access to an improved development-approval process, from the Department of Primary Industries and Fisheries wanting specific resource areas excluded from the reforms, and from individuals wanting to divert the Government's focus to other areas of reform such as welfare. Such resistance can be expected in this area of reform and was not unique to Tasmania. For example, Buhrs and Bartlett (1993: 117) claimed that New Zealand's reforms were resisted, in part successfully, by the New Zealand Treasury which was intent on ensuring that planning, and regulatory functions such as pollution control, were undertaken by different agencies to ensure that the policy process was not captured within a single department.

In Tasmania, the continuation of the reform process depended on support from two areas - industry representatives and the conservation movement. The consultation process generated the support needed from the representatives of industry by instilling in them a confidence that an inclusive development-approval process would allow greater possibilities for achieving development approvals, that minimising production wastes would result in improved profitability, and that the State Government would grant industry operators realistic time frames in which to comply with envisaged tighter environmental standards. This confidence was not only politically important during the Labor Government's reform process, but also instrumental in persuading the in-coming Liberal Government in 1992 to proceed with the reforms.

The support of the conservation movement was finally achieved when it accepted, as a result of the extensive consultations and communications undertaken by the System's architects with the movement, that individuals within the State

Government were sincere in their attempts to introduce genuine environmental management reform. This acceptance resulted in the conservation movement altering its position from publicly voiced dissatisfaction with the reforms to, not only actively supporting, but contributing positively to them. The conservation movement's support was crucial to those individuals in the State Government seeking genuine reform, for without it those individuals faced resistance not only from inside State government, but also from the public domain. According to Hay (1993: 154-155), it was essential that this the latter resistance was removed, for it made the implementation of sustainable development all the more difficult.

The final lesson from the development of the legislation is that although the System's architects conceded that only 85 percent of the necessary reforms had been achieved (Bingham pers. comm. Nov. 1995 & Davies pers. comm. April 1996), it was more beneficial to accept those gains than, as Davies stated, 'die in a ditch over principle'. The concessions began with Michael Aird, the Labor Government's Minister for the Environment, accepting the Legislative Council's proposal for a public land use commission, a proposal which he was advised could present future difficulties. This concession was followed by the framing of the legislation in a manner designed for acceptance by the Legislative Council rather than as a single Act similar to New Zealand's *Resource Management Act 1991*. These concessions were followed by the Liberal Government's dissection of the proposed environmental management and planning commission into three separate bodies, and the politicising of the major developments approval process. The concessions involved the System's architects sacrificing aspects of what they considered was the most effective and efficient approach to reform in order to gain part of a greater whole. The underlying philosophy was that a reformed System with weaknesses and omissions that could be rectified in the future was a more profitable outcome than no reform at all.

In my assessment the value of the consultation process was the primary lesson which emerged from the development of the legislation. The process was responsible for a remarkable result: it transformed the intended formulation of an improved development-approval process into a process which truly reformed environmental management and planning legislation in Tasmania by introducing substantive environmental policy. The evolution of policy through broad public participation, an occurrence also witnessed during New Zealand's development of its Resource Management legislation (Buhrs and Bartlett 1993: 132), underlines Agenda 21's insistence for domestically determined policy frameworks.

9.3 Success and Failure in Implementation

The lessons which can be extracted from the System's implementation fall decisively into three realms. The first consists of those lessons associated with the System's internal mechanisms and processes. Secondly, there are the lessons concerning the performance of the individuals either administering or using the System (awareness and understanding), including their desire to effect change with it. The final and major lesson is derived from a combination of the two and involves the quality of policy directing the System. There is less often a lesson to be learned from strength rather than weakness, however, in terms of the System's structure, public reviews undertaken to date have revealed overwhelming support for the System. This suggests that there is widespread acceptance and satisfaction that its structure is generally providing the facilities for integrating environment and development required by those administering and using it.

However, as would be expected with the introduction of a System that radically altered the approach to resource management and land use planning, the System's implementation has revealed numerous weaknesses associated with its internal processes. The principal weaknesses involve the difficulties in developing regional strategic planning, and the inability of the current planning scheme format to integrate environment and development. The difficulties in developing regional strategic planning resulted primarily from the omission of appropriate regional planning mechanisms. Although regional planning was recognised in the public review process as an important planning component (ch. 4.4.2.9), with its importance also emphasised in the Premier Groom's second reading speech to Parliament (Tasmania, House of Representatives 1993a: 2161), regional planning has not occurred. According to the Edwards Report (1997: 33), the lack of a regional strategic planning mechanism had contributed substantially to the limited integration of environment and development undertaken to that time. One can only conclude from the review documents and the Premier's speech that the State Government either envisaged regional strategic planning would emerge from a loose and informal relationship between State and local governments and the community, or it recognised that, as asserted by TBA Planners (1996: 30), the organisational and resource requirements to establish such planning across the State would make it almost prohibitive. Nonetheless, given the role of regional strategic planning in providing a direct link between State and local spheres of government through the translation of State policies, regional strategic planning is essential, and appears at this stage to require a formal process if it is to eventuate. According to Bunker (1994) strategic planning involves selecting true strategic variables to influence, clarifying the decisions made to influence those variables, and incorporating the instruments of influence in the initial strategic statements. Because of

these requirements one can also conclude that without a formal planning process to select and influence these variables at a regional strategic level, State policies will tend to avoid the comprehensive and encompassing policies necessary for achieving the broader objectives of Agenda 21.

The inability of the current planning scheme format to integrate environment and development, a result of the traditional approach to planning schemes being transferred to the new System, has been a source of considerable dissatisfaction. TBA Planners (1996: 4, 26) claimed that planning schemes were still largely seen in their previous narrow role as development control documents, often based on out-dated land use planning perspectives, and tended to emphasise use and development control and prescriptive regulation. They firmly believed that there was no capacity under the current structure and format of planning schemes to deliver comprehensive resource management, and that a new method must be conceived to allow planning schemes to assist in delivering appropriate management outcomes.

Many planners were aware that a new planning scheme format, especially one that eliminated the reliance on zoning to determine land use, was necessary to achieve sustainable outcomes, but this awareness was not widespread. The difficulties involved in the use of zoning for achieving sustainable outcomes have, however, now received wide acceptance, and a draft 'model planning scheme' was recently released for public comment. According to John Pretty (pers. comm. Aug. 1998), the State Government's planning officer responsible for its development, the model establishes a State-wide land use classification System which will not only stipulate the development options for specific areas, but also the environmental requirements for those options.

Another important process weakness revealed during the System's implementation involved the legal complexities with the interpretation of the *Local Government (Building and Miscellaneous Provisions) Act 1983* in relation to local government's responsibilities for subdivision planning. In this respect local government claimed the legislation left it uncertain of its legal right to refuse an application to proceed with land subdivision where land was zoned for subdivision. In addition, local government was also unsure of its legal rights to require headworks charges from developers. These weaknesses, stemming primarily from the hurried drafting of the Act, are currently being eliminated through amendments to the Act (McMullen pers. comm. Feb. 1998).

The externalities to the System's implementation, involving the performance of the individuals administering and using the System, and their lack of desire to effect change with it, were factors which significantly affected its effective and efficient implementation. Close scrutiny of these weaknesses reveals that many were avoidable. The principal weakness was undeniably the lack of understanding and awareness of the System's objectives and processes at all levels of administration and use. According to both the Edwards Report and TBA Planners, this lack of understanding and awareness diminished the integration of environment and development in most decision-making. Although, as is emphasised above, the poor definition of the System's objectives caused problems with their interpretation, the problem underlying the inadequate understanding and awareness of the System was a consequence of the poor information and education programmes provided for the System's administrators and the general public. According to the Edwards Report, it was 'quite evident that there was insufficient done to advise and instruct not only the public but more particularly the decision-makers when the System started to operate' (1997: 71). The lack of advice and instruction deprived administrators and the public of an understanding of the legislative definition of sustainable development in a way that enabled it to be incorporated into either State or local government decision-making (Edwards Report 1997: 17), and also the detail of the strategic planning framework and how it should operate (TBA Planners 1996: 26). According to the Edwards Report, the inadequate level of awareness and understanding of the System by its decision-makers and the public was due to a general paucity of information which, as is noted above, led the public and the decision-makers to attempt to remould the System to suit outdated ideas and practices rather than to embrace it (1997: 5).

It was recommended in the Edwards Report that an ongoing education process, particularly for decision-makers in local government, given its critical role in the administration of the System, should be developed and implemented as a matter of urgency (1997: 12). In response to its findings that many elected representatives had not grasped the fact that their role was now one of direction and policy rather than deciding on the detail of the process, it was proposed in the Report that elected councillors receive education for their role in the System, and that they receive the necessary training to make informed planning decisions. It was emphasised in both the Edwards Report (1997: 9, 12, 20) and by TBA Planners (1996: 15, 43, 46) that there was an urgent need for education programmes to explain the concept of sustainable development and the System's processes to the relevant State and local government administrators and the community at large.

The lack of desire to effect change with the System must, to some degree, be attributed to the lack of awareness and understanding of the System's objectives and processes. However, according to the Edwards Report, the principal factor was the attitudes towards the System resulting in a lack of leadership (1997: 17). These attitudes, consisting of a reluctance to advance the notion of sustainable development and to recognise the change in approach to planning, were shown not only by elected officials, but with some professionals such as planners, consultants, legal practitioners and surveyors operating within the System. In respect of elected officials, it is stressed in the Edwards Report that the role of a local government councillor is not synonymous with that of a member of a planning authority, and that decisions on development should be undertaken on proper planning principles by suitably qualified staff, not by councillors using political judgement as the basis for their decisions (1997: 35).

Many of the above claims imply the lack of desire to effect change with the System. TBA Planners, however, were emphatic about the need for a commitment to the objectives of the System. They asserted that the obligations bestowed on various authorities and agencies by the System, including the obligation to further the scheduled objectives and to undertake proper enforcement, needed to be met (1996: 28, 29). The impacts on State and local government authorities of the criticisms and recommendations in the Edwards Report and by TBA Planners concerning the need for full and proper implementation of the System remains to be seen. The amalgamation in 1997 of the Sustainable Development Advisory Council, the Public Land Use Commission and the Land Use Planning Review Panel into a body entitled the Resource Development and Planning Commission indicates a philosophical move away from this commitment. This conclusion is drawn not only in response to the change of name which has, in effect, reduced the Sustainable Development Advisory Council to a resource development advisory body, but that the legislation establishing the Resource Development Planning Commission requires all six members of the Commission to be nominated by the Minister (Tasmania 1997b: s. 5).

The System's most debilitating weakness, however, comprising a combination of weaknesses in both internal processes and external attitudes, involved the scarcity of State policies. This scarcity resulted in the absence of an overarching planning framework which, because of its defining role for all the System's planning instruments, impacted on the efficient and effective functioning of the entire System. Although the State policy development process appears adequate, the process for initiating and developing draft policies has been severely criticised. According to the Edwards Report and TBA Planners, the problems have stemmed from the State Government having sole responsibility for initiating State policies, and the legislation prescribing the certification

and approval processes for State policies rather than their format, content, and preparation processes. State policies may currently only be initiated by State Government Ministers. After three years and, according to the Edwards Report (1997: 27), many calls for action with little or no response, there was only one State policy in place. It was asserted in the Report that the State Government's role in initiating draft State policies was ineffective, and should be reviewed in favour of a mechanism which provided the necessary direction in a less ponderous and more timely way (1997: 27).

TBA Planners (1996: 26) claimed that the dearth of State policies had seen 'limited consideration given to the economic and social components of sustainable development', and despite the major change in legislation, 'in many regards resource management and planning on-the-ground had not changed'. They cited the 'absence of State policies having resulted in the planning and decision making processes of State agencies not being integrated within the overall resource management framework, leading to a lack of integration of resource management and planning outcomes' (TBA Planners 1996: 4).

In addition to the problems resulting from a policy development process which can only be initiated by the State Government, the development of State policies has also been hindered by the Advisory Council's inability to amend draft State policies in response to the representations received during the draft's public exhibition. This has been a consequence of the statutory provisions governing policy development restricting the Advisory Council to little more than peripheral modifications. In this respect the Advisory Council has the power only to recommend to the Minister that a draft policy is either accepted or rejected. It does not have the power to amend a draft policy even though amendments would render the policy acceptable to all stake-holders. Moreover, according to the legislation, once a draft policy is rejected, the policy development process must begin anew. The Edwards Report recommended that this statutory restriction on the Advisory Council be removed both to expedite the development of State policies and to avoid the large costs involved in reinitiating draft policy processes.

Discussion of the lessons to have emerged from the implementation of the System cannot be concluded without reference to the role of resourcing, as no System will perform beyond the level of the resources invested. Although weaknesses in the System's processes have undoubtedly played a significant role in the difficulties experienced during the System's initial implementation, the level of resourcing by State Government has underpinned the poor provision of education, limited the development of State policies and affected the enforcement of the System's objectives.

Notwithstanding the detrimental affect of the State Government's budgetary problems on resourcing, and the administration of the System being largely independent from the executive branch, it is the responsibility of the Minister for Environment and Planning to ensure that the System operates efficiently and, because of his/her position, to play a leadership role in policy development and strategic issues. This did not occur. The System was, and remains, only partially implemented. As numerous claims in the Edwards Report and by TBA Planners indicated, substantial support in the form of direction and resources from the State Government was needed to ensure the effective and efficient operation of the System.

9.4 Conclusion

Many important lessons have emerged from the development and implementation of the legislation underpinning the System. It may be argued that the initiation of the reforms was the political response to the continuing demands, which included vehement protest, by sections of the community for responsible environmental management. It may also be argued that the comprehensiveness of the reforms resulted from the conservation movements presence in the political arena - especially their sentiment of conciliation and compromise.

The principal lesson to have emerged from the development of the legislation is, unequivocally, the importance of the consultation process. Because of the centrality of the consultation process in the legislative reforms, the System's administrators and the community were empowered with a set of statutory objectives embodying the principles of sustainable development, and a series of processes which integrated environment and development in policy, planning and management. The consultation process was also essential in generating the necessary support from the representatives of industry and the conservation movement for those in the State Government and bureaucracy wanting genuine reform but facing considerable opposition to those reforms. It is also important to note that the System's architects realised the importance of adopting a politically realistic approach to the reforms. Given the difficult political circumstances that prevailed during the development of the legislation, that is, an extremely powerful and conservative Upper House and a pro-development Liberal Government during the final stages of the legislation's development, the System's architects were willing to surrender what they considered were important aspects of resource management and planning in order to gain an improved system, albeit with weaknesses they believed could be overcome at a future time.

Investigation of the System's implementation has revealed numerous circumstances which substantially hindered its effectiveness and, which in hindsight, could have to varying degrees been avoided. These circumstances, principally drawn from the findings of the two Reports commissioned by the State Government into the System's planning processes, comprise the shortcomings in the System's instruments and processes, the performance of those using the System and the consequences of the combination of the two.

The effectiveness of the System's comprehensive planning framework was substantially diminished by the absence of a mechanism for regional strategic planning, the mechanism on which other planning instruments such as local government strategic plans and planning schemes depended. In addition, the System's effectiveness was diminished by the retention of the antiquated concept of land use zoning in planning schemes, a format designed for development control rather than environmental management. The inappropriateness of this format for environmental management has been recognised, and an alternative format is presently being developed. The performance of those using the System can be characterised as poor; the result of a lack of awareness and understanding of the System's objectives and processes, and a lack of desire to use the System to institute changes in environmental management. Underpinning both these problems was an absence of education programmes for the System's administrators and the public, however, associated with the latter problem was a lack of leadership based on negative attitudes towards the System. These attitudes, which existed in both State and local government as well as with professionals using the System, resulted in a reluctance to promote the objectives of sustainable development and, to recognise that a change in approach to planning was required.

The majority of the System's implementation problems resulted, however, from a scarcity of State policies to drive the System. This dearth was the result of the State Government having sole responsibility for initiating draft policies, as well as the legislation lacking prescription for their format, content, and development process. Compounding these problems was the Advisory Council's statutory restriction to its capacity to amend draft Policies to render them acceptable to all parties involved.

Commonsense dictates that adequate resourcing is a prerequisite for effectiveness. Given the inadequate level of education, the negative attitudes towards the System, the limited initiation of draft State policies and the unacceptable level of enforcement of the System's objectives and processes, it is not surprising that the two

reports commissioned by the State Government asserted that insufficient resources were employed for the System's effective operation.

I have investigated the journey undertaken (to date) by Tasmanians towards sustainability, and assessed the fruits of that journey in terms of the System's potential to facilitate both a Tasmanian benchmark of sustainability and a resolution to the problems surrounding development and the environment in Tasmania. I have also discussed the lessons which have emerged from that journey during the past twenty five years. What conclusions can be drawn from this investigation, assessment and discussion in terms of Tasmania's future sustainability and the pursuit of economic growth in a manner that does not result in social and political unrest? In broader terms, what can be said of the role of legislation in delivering sustainability? These conclusions are presented in the following final chapter.

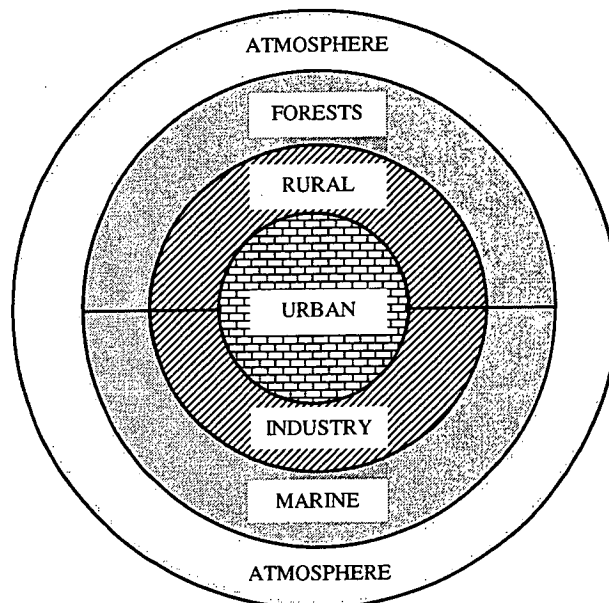
Chapter Ten

A Synthesis of Conclusions

In this work about the pathway undertaken by Tasmanians towards sustainability, I have approached a complex concept and isolated a Tasmanian benchmark consisting of principles, objectives and processes on which sustainability in Tasmania depends. Furthermore, I have assessed the potential for the objectives and processes enshrined in Tasmanian legislation to facilitate both the Tasmanian benchmark and social and political stability in the face of development. What expectations can Tasmanians have that their new resource management and planning system can be used to meet these ends?

Figure 10.1 schematises the basic environmental domains which must be addressed in pursuing sustainability. In chapters seven and eight I have shown that the jurisdictional authority and, therefore the developmental and managerial opportunities, provided by the System increasingly dissipate towards the perimeter of the figure.

Figure 10.1 Basic environmental domains to be addressed in the pursuit of sustainability.



Urban development and management, the core of the figure, may be comprehensively addressed through the System. It must be noted, however, that the aesthetics of urban development and management such as skylines, uninterrupted vistas and culturally relevant developments is not a central tenet of the international benchmark despite the System having been used predominantly for such issues in this domain. Urban development only assumes such centrality in the context of issues such as transport systems, energy generation and consumption, the impacts of human settlement on the marine environment, methods of construction and the urbanisation of productive rural land. Although the System may be used to address most of these issues, there is presently a void in understanding the need for sustainability and in the awareness of the System's role in their facilitation. The System may also be used to address many unsustainable development practices such as vegetation removal, and management issues such as erosion, runoff and the contamination of water resources by introduced nutrients in the rural domain. Unfortunately, there is a void of equal, if not greater proportions in the rural (than in the urban) domain. It exists because of the resistance by planners, in large part due to interference by elected councillors and the attitudes of land owners, to using the System to address these issues. Consequently, although the System may be used to facilitate most of the facets of the Tasmanian benchmark in these two domains, it is unlikely this use will be witnessed in the near future.

The use of the System to promote sustainability in the domain of industry is similar in characteristics to the urban and rural domain. The System can unequivocally be used by State environmental management authorities to limit the discharge of pollutants by requiring industrialists to introduce best practice environmental management and by imposing financial costs on industrialists for discharging pollutants. However, because of the lack of understanding of the concept and awareness of the need for sustainability the standards and regulations imposed on industrial operators remain as lenient as when they were first introduced in 1974. Despite the rhetoric, they tend to be framed according to human health issues rather than promoting and sustaining environmental integrity. In fairness it must be said that these standards and regulations are generally in accordance with national guidelines, and the principal problem is one of retaining national and international economic competitiveness because of its direct impact on factors such as employment. However, irrespective of the validity of the justifications, it is not warranted, especially in the near future, to expect the System's potential to be used to achieve the Tasmanian benchmark in this domain.

The domain of forest development and management has been discussed at length. The use of the System to classify the development regimes for State Forests has

been poor, and has fallen far short of achieving the Tasmanian benchmark. The development and management of State Forests, especially those on private land, is shown to be equally as poor and, because they remain outside the jurisdiction of the System there should be little expectation of the Tasmanian benchmark being achieved in this domain. The marine domain is similarly at arms length from the System, although the legislation governing its development and management includes the System's objectives and some of its processes. In addition, the System also allows for land based impacts on the marine environment to be comprehensively addressed. However, because of its distance from the System, and because the marine authorities both determine and enforce the regulations governing development of the marine environment, expectations for the Tasmanian benchmark to be promoted within this domain should not be high.

The atmosphere constitutes the final environmental domain. Except for the System's provisions prohibiting the use of CFCs, there were no explicit references in the System to limit the emissions of greenhouse or ozone depleting gases. One example is sufficient to substantiate the State Liberal Government's attitudes towards the atmosphere. In 1996 the State Liberal Government released draft assessment guidelines for a new pulp and paper mill to be built in Northern Tasmania. The guidelines proposed allowing the mill's operators to use approximately 63 000 litres of petroleum per day to supplement the mill's energy needs that were not generated by its combustion of the mill's fibre waste (Sustainable Development Advisory Council 1996a: 5). This was despite the HEC's ease in supplying the mill's energy requirements, and the intention to install the infrastructure necessary to allow the mill to draw (hydroelectric) energy from the State grid (during periods when the mill was unable to generate its own energy) concurrent with the mill's construction. The absence of explicit focus on atmospheric issues within the System's legislation is a major weaknesses.

One of the central tenets of the international benchmark reached at the Earth Summit and, therefore, one I consider central to the Tasmanian benchmark, is the need for changed attitudes towards consumption in industrialised countries. It is highly unlikely the System will facilitate this change. As discussed in chapter seven, the System may be used to approach this change by charging industrialists for all discharged pollutants, but I contend that such use is not presently contemplated. Moreover, the second of the two economic instruments (which is based on the natural resource user pays concept) for inducing the required change is entirely absent from System. It is also highly unlikely that this absence will be redressed in the near future because of the perspective on environmental accounting (the mechanism proposed in Agenda 21 to underpin this economic instrument) articulated by the Commonwealth Government's

Ecologically Sustainable Working Groups. According to the Working Groups, environmental accounting is to be used to 'evaluate the impacts of public and private actions on the environment and economy, and assess whether those actions are sustainable and contribute to improving community welfare' (Australia 1992: 153-171). This interpretation of environmental accounting is not what Agenda 21 intends, but is almost total opposed to it. Rather than placing (as Agenda 21 proposes) an economic value on the use and consumption of natural resources to allow for that value to be incorporated within the cost of production and consumption, the Working Groups are attempting to ascertain the economic and social costs from sustainable development policies.

Given Agenda 21's claim for the need to redress the unsustainable patterns of production and consumption in industrialised countries, and its recommendations for using economic instruments based on environmental accounting to achieve this objective, the apparent discrepancy between the Federal Government's approach to environmental accounting and that of Agenda 21 is significant. It reveals the need to examine the Federal Government's intentions and to undertake a comprehensive investigation and assessment of a potential framework and mechanisms for developing an environmental accounting process compatible with these economic instruments. Furthermore, it is essential that an investigation be undertaken of the optimal characteristics of these instruments and the means for and the ramifications of their implementation.

The expectation for the System to facilitate the Tasmanian benchmark and, therefore a sustainable future in Tasmania, has many dimensions. Firstly, the System does not embrace all aspects of the Tasmanian benchmark. Secondly, the System cannot be expected to facilitate the majority of those aspects it does embrace until there is the knowledge, understanding and awareness by those using the System of sustainability and the need for its implementation across all environmental domains. As is discussed in chapter nine, this is primarily a resource issue. Knowledge, understanding and awareness of sustainable development and the use of the System to pursue sustainability will only proceed from education. Another important resource issue (discussed in chapter nine) vital to this expectation is the need for adequate funding and sufficient skilled personnel to ensure the System is effectively and efficiently implemented and enforced. These resources were not employed during the previous two terms of the State Liberal Government (1992-1998), nor are there indications from the recently elected (October 1998) State Labor Government that those resources will be made available. It must also not be overlooked that the expectations

for the Tasmanian benchmark to facilitate sustainability are based on the proviso that the international benchmark is an efficacious concept of sustainable development.

The expectations which can be held for the use of the System to avoid social and political conflict while pursuing economic growth similarly have many dimensions. The statutory processes within the System, particularly those which require comprehensive assessment of the impacts of development and provide for extensive public participation and appeal in development approvals, should result in decisions which accommodate most development perspectives. The development of projects of State significance is the exception. Although it is blatant that the major social and political conflicts over development in Tasmania have been in response to executive branch decision-making, the System, because of intervention by the State Liberal Government in the formulation of the legislation, provides for a continuation of executive branch decision-making over major development proposals. Because of this provision, continued social dispute is inevitable, and there are no obvious reasons to preclude a recurrence of episodes of political instability similar to those experienced in Tasmania in the past.

This thesis progressively exposes the role of legislation in the pursuit of sustainability. Legislation is shown to be only a mechanism to be used in pursuing a particular objective. There is an intrinsic difficulty in sustainable development legislation in defining that objective because of the nature of the concept. This difficulty is compounded by the economic ramifications inevitably accompanying the interpretation of the objective and the need for extensive resources for education and for the efficient and effective implementation and enforcement of the legislation. Added to all these difficulties is the cultural resistance to such a radical change in approach to development.

Despite these weaknesses and impediments, the System should generate optimism in the Tasmanian community that increasingly meaningful strides towards sustainability in Tasmania can be achieved. The System should also be seen by the international community as a competent attempt to address the benchmark which emerged from the Earth Summit.

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APPENDICES

Appendix I

Personal Communications

Alexander, E.	former Tasmanian Labor Party Secretary.
Baker, D.	Senior Environmental Health Officer, City of Glenorchy.
Bates, G. (Dr)	previously Lecturer in Environmental Law - University of Tasmania, and Member of Parliament.
Bingham, R.	previously Executive Manager, Policy Division, Department of Environment and Land Management, presently Secretary of the Department of Justice.
Clarke, L.	Research Officer, Southern Midlands Council.
Croome, P.	Land Management Officer, Department of Environment and Land Management.
Doole, J.	Senior Environmental Health Officer - Kingborough Council.
Davies, R.	Policy Development Officer, Department of Environment and Land Management.
French, G.	Environmental Health Manager, City of Glenorchy.
Gilblin, R.	Manager, Planning Services, City of Glenorchy.
Graham, R.	previously Executive Planning Officer, City of Hobart; presently Senior Lecturer in Environmental Studies, University of Tasmania.
Gunter, S.	Executive Legal Officer, Environmental Defenders Office, Hobart.
Hay, P. (Dr.)	previously Senior Personal Private Secretary to the State Labor Government Minister for the Environment; presently Reader in Environmental Studies, University of Tasmania.
Johnson, E.	Senior Geologist, Department of Mines.
James, R.	Alderman, City of Clarence.
Jones, W.	Environmental Management Division, Department of Environment and Land Management.
Kirkwood, T.	Assistant General Manager, Southern Midlands Council.
Koehnken, L. (Dr)	Programme Manager, Pieman River Environmental Monitoring Programme.
Lynch, M.	President of the Tasmanian Conservation Trust.
Mackey, D.	Senior Principal Research Scientist, CSIRO Division of Oceanography, Hobart.
Mackie, D.	Planning Officer, Southern Midlands Council.
McMullen, A.	Planning Officer, City of Glenorchy.

- McQuillan,P.(Dr) previously Scientific Officer, Department of Primary Industries and Fisheries; presently Senior Lecturer in Environmental Studies, University of Tasmania.
- Nolan, G. Environmental Services Manager, City of Clarence.
- Parsons, J. Environmental Superintendent, Australian Newsprint Mills, Boyer, Tasmania.
- Port, A. Planning Services Officer, Department of Environment and Land Management.
- Richley, L. Senior Soil Conservation Officer, Department of Primary Industries and Fisheries.
- Sansom, I. Planning Officer, Department of Environment and Land Management.
- Tregenza, G. Major Project Manager, Department of Development and Resources.

Appendix II

The objectives of the Tasmanian Resource Management and Planning System are:

- 1 -
 - a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - c) to encourage public involvement in resource management and planning; and
 - d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
 - e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

- 2 - In clause 1 (a), "sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while -
 - a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Appendix III

The Principles of the Rio Declaration on Environment and Development

- Principle 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a health and productive life in harmony with nature.
- Principle 2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.
- Principle 3: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
- Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.
- Principle 5: All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.
- Principle 6: The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.
- Principle 7: States shall cooperate in a spirit of global partnership to conserve protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.
- Principle 8: To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.
- Principle 9: States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adoption, diffusion and transfer of technologies, including new and innovative technologies.

- Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
- Principle 11: States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.
- Principle 12: States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.
- Principle 13: States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.
- Principle 14: States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.
- Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- Principle 16: National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of

pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17: Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18: States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19: States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20: Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21: The creativity, ideals and courage of the youth of the world should be mobilised to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22: Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23: The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24: Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25: Peace, development and environmental protection are interdependent and indivisible.

Principle 26: States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27: States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.